BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

ORIGINAL

In the Matter of the Application of)

HAWAIIAN ELECTRIC COMPANY, INC.) DOCKET NO. 2008-0083

For Approval of Rate Increases and)

Revised Rate Schedules and Rules.)

TRANSCRIPT OF PROCEEDINGS

VOLUME II

Public Utilities Commission hearing held on Tuesday, October 27, 2009, commencing at 9:03 a.m., at 465 South King Street, Honolulu, Hawaii, pursuant to Notice.

REPORTED BY: TRISTAN-JOSEPH, CSR NO. 469

Certified Shorthand Reporter

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P R O C E E D I N G S

CHAIRMAN CALIBOSO: Good morning.

I'd like to call this proceeding back to order.

Again, my name is Carlito Caliboso, Chairman of the Public Utilities Commission. I'm joined by Commissioner John Cole and Commissioner Les Kondo.

Parties, can I have your appearance for the record?

MR. KIKUTA: Good morning, Chairman Caliboso, Commission Cole, Commissioner Kondo, Mr. Hempling.

Peter Kikuta appearing on behalf of Hawaiian Electric Company.

MR. ITOMURA: Good morning, Chair Caliboso, Commissioner Cole, Commissioner Kondo, Mr. Hempling.

Jon Itomura on behalf of the Consumer Advocate; and, with me this morning Mike Brosch, Steve Carver, Executive Director Cat Awakuni, Joe Herz, Dean Nishina.

MR. MCCORMICK: Jame McCormick and Dr. Kay Davoodi; again, representing the Navy and the Department of Defense.

CHAIRMAN CALIBOSO: Thank you.

We're starting Panel 4 today.

Is there anything before we start the panel?

MR. KIKUTA: Nothing from Hawaiian Electric, Mr. Chairman.

MR. ITOMURA: Nothing from the Consumer Advocate.

MR. MCCORMICK: And nothing from the DOD.

CHAIRMAN CALIBOSO: All right. Thank you very much.

Again, it might be helpful to list your witnesses.

MR. KIKUTA: Yes, thank you.

For Panel 4 we have Mr. Alm, Ms. Chiogioji, who have both appeared as panelists yesterday; and, we have Ms. Furuta-Okayama, the Direct of Hawaiian Electric's Compensation Division, and Mr. McInerny, Manager of Hawaiian Electric's Industrial Relations Department.

Ms. Furuta-Okayama and Mr. McInerny have not yet been sworn in as panelists.

CHAIRMAN CALIBOSO: Okay. Thank you.

MR. ITOMURA: For Panel 4, the Consumer Advocate has Mike Brosch and Steve Carver. They have been sworn in.

MR. MCCORMICK: For Panel 4, the Department of the Defense has no witnesses.

CHAIRMAN CALIBOSO: Thank you.

If you could have your witnesses stand, Mr. Kikuta.

Do you solemnly swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth?

MR. MCINERNY: Yes.

MS. FURUTA-OKAYAMA: Yes.

CHAIRMAN CALIBOSO: Thank you. You may be seated.

You may proceed, Mr. Hempling.

MR. HEMPLING: Thank you, Mr. Chairman.

Good morning, ladies and gentlemen.

So we'll begin Panel 4 with some questions about employee wages and benefits.

Let me start with the CA.

Does the existence of a Collective Bargaining Unit, in and of itself, signify the prudence of the associated expenditures?

MR. CARVER: I can't answer that question from a legal perspective, but I have to say that, in my experience, it is extremely difficult to challenge the reasonableness of the bargaining wage rates that had been separately negotiated. I don't recall being in a case where such a challenge has been made.

MR. HEMPLING: What evidence should the Commission look at to make a judgment as to whether the Company appropriately balanced the interests of the ratepayers, its shareholders and the need to retract and retain excellent employees, what factors should the Commission look at?

MR. CARVER: When you're dealing with the bargaining portion of the Company's workforce, the Commission could certainly look at whether the wage rates embedded within that Bargaining Unit are competitive and comparable with the industry in which the Company is competing for new-hires or retaining employees.

I have seen some of those studies over the years, but there is some difficulty in trying to match up individual positions within across companies. I think the Company has filed testimony comparing, I think, a lineman pay rate because that's fairly common, you know, job duties across the companies; so, the comparative wage analysis can be somewhat limiting in getting a direct, you know, position-for-position comparability.

MR. HEMPLING: What did you and/or Mr. Brosch look at to make a judgment that the Company's employee costs were reasonable?

MR. CARVER: I don't recall if we -- if I looked at any specific wage studies. I am familiar with and did look at the Company's detailed calculations of the standard labor rate that they use here in Hawaii, or HECO does; and, I did not see any wage rates that appeared to be out of line given the hight cost of living here in Hawaii.

Also, we are mindful of the difference between what I would consider to be approved positions that the Company is seeking to fill and their ability to hire people and keep up the full staff; so, looking at historical vacancy rates, kinds of gives us an indication of whether or not the salary scale is excessive if one were to look at it from that perspective, and I have haven't seen any indication that the Bargaining Unit wage rates are excessive.

MR. HEMPLING: Anything to add, Mr. Brosch, to this?

MR. BROSCH: No, I agree with Mr. Carver's comments.

COMMISSIONER KONDO: Could you explain that last comment about looking at the vacancy rates and your conclusion that they're not excessive to salaries or the wages?

What is the relationship between those two comments?

MR. CARVER: Certainly. If the wage rates were high on a comparative scale and in the marketplace where the Company is competing to fill its positions with other utilities or even other companies that are not utilities, if HECO's wage rates were high, you would expect them to have people lining up at the door to try to fill those positions knowing that they have an above-market wage scale; so, when I look and see a fairly, over time, a fairly constant vacancy rate, that tells me that it's a marker and an indicator that the wages are not above what one would expect for those positions.

COMMISSIONER KONDO: In Hawaii, we have a very unique labor market, at least in my opinion, where folks that want to come home or want to live in Hawaii, there's not a lot of different competing options.

Do you consider that factor in deciding whether or not the wages are appropriate or perhaps the wage increase is necessary or not necessary?

MR. CARVER: I have to say that I did not conduct any analyses that attempted to consider that specific factor.

COMMISSIONER KONDO: Is that an important factor, from your perspective, as to determining whether or not the wage increase is appropriate and reasonable?

MR. CARVER: I would say it's a factor. I wouldn't necessarily consider it an important factor; because, in the labor market, the Company is not all -- necessarily looking to attract those who grew up here back to the islands but trying to attract qualified employees from around the country that can really bring needed technical skills to the Company and help them fulfill their obligation to their customers.

COMMISSIONER KONDO: Although, would you agree that if, for instance, someone that is from Hawaii that wants to live in Hawaii that perhaps the wage increase may not be as an important factor to retaining that employee because of his desire to live in Hawaii?

MR. CARVER: That's possible. I have not conducted any type of review to reach a firm conclusion but certainly --

COMMISSIONER KONDO: But wouldn't that be an important factor in deciding whether or not the wage increase is necessary, because I know one of the factors that the Company points out is it's necessary to retain employees?

So, I guess, I'm questioning whether that is really or how significant that, is given that we have a very unique labor market.

MR. CARVER: As I mentioned earlier, I do believe it's a factor, but whether it's an important factor for the Company, I can't speak. From my experience, the costs of living is very high here and unless an individual is insistent in staying in the islands, they can do better on the mainland.

There are much lower cost of living areas and they can make a comparable or better wage scale in certain portions of the country; so, you know, it is a factor. How important it is, I can't speak.

COMMISSIONER KONDO: And, Mr. Carver, I think, all of us in this room are aware of the fact that perhaps we could make more if we moved to the mainland but we choose to live in Hawaii, so it seems to me that is an important factor; but, you're saying that's something that you did not necessarily use as one of your inputs in deciding that the wage increase is appropriate?

MR. CARVER: That's correct.

COMMISSIONER KONDO: All right. Thank you.

MR. HEMPLING: Who at the Company can talk about the process of negotiating with the Union?

MR. KIKUTA: That would be Mr. McInerny.

COMMISSIONER KONDO: Good morning, Mr. McInerny.

MR. MCINERNY: Good morning.

MR. HEMPLING: What are your responsibilities with respect to negotiating with the Union?

MR. MCINERNY: To negotiate the contract when it expires.

MR. HEMPLING: What do you between negotiations?

MR. MCINERNY: Oh, I deal with the contract enforcement, grievances, discipline, interpretation, et cetera.

MR. HEMPLING: What can you tell the Commission to help them understand how things shake out between the Company and the Union during negotiations?

Let me try to be more specific.

Again, the purpose of this is the Commission understand the reasonableness of the costs associated with the Collective Bargaining Agreement. That's the general purpose for these questions.

For example, what's the relative bargaining power between the Company and the Unions?

How does that shake out?

MR. MCINERNY: Well, you have to -- you have to be prepared to deal with the strike ultimately if that's, you know, I mean, if you're going to balance the power. If they're willing to walk, you have to decide at what point you draw the line and you're willing to take that job action;

because, essentially, that's the power that unions have is to ultimately strike.

So you make estimates and you go through the process of negotiations. You both start from very far points in the journey; and, through the process, you eventually work your way to something that you can both benefit from or feel that it's adequate.

MR. HEMPLING: Do the two sides use indices, comparable positions, and salaries from other companies in order to assert the reasonableness of their positions?

MR. MCINERNY: That's one -- that's one strategy. The Union, I think uses as high as it can get. They look for the highest level in California, I guess, and use that as their benchmark; particularly, the lineman's rate, and they look at the percentages that have come down in recent -- the recent past for those contracts. In the last -- the two contracts prior to this one, I didn't necessarily use those comparisons. I used an affordability argument.

MR. HEMPLING: What do you mean by that?

MR. MCINERNY: Well, what we were prepared to give and what we thought was fair.

MR. HEMPLING: And affordability, in terms of taking into account Hawaii's cost of living you mean?

MR. MCINERNY: No. Affordability in terms of what the Company could afford to give.

MR. HEMPLING: Ah.

MR. MCINERNY: Because, in any case, that's what you have to deal with. You have to deal with what you can afford to give, and that was my strategy.

MR. HEMPLING: So their bottomline is the ability to strike and your bottomline is the ability to say, If we pay you any more, we're going to be unviable as a Company?

MR. MCINERNY: Not necessarily. I don't think you use the extreme measures necessarily. You have to -- the process of negotiations is not one line. It is a process of convincing people that your position is fair, and it takes some time, you know. You have to have some ability to do that.

You cannot come in and just have definitive positions that put you at odds and you're never able to bridge those gaps. Seasoned negotiators are able to get through all of those parallel positions and you're able to merge at some point.

MR. HEMPLING: Let me understand these two concepts so far. One being the indices and the other being affordability.

How does the Company make an affordability argument to the unions because you're talking about affordability from the perspective of the Company as a whole?

MR. MCINERNY: Well, affordability basically argues what we're prepared to pay, that we're in this State in particular; and, you know, our position doesn't necessarily equate with California. We have to equate with what we're dealing with in the State of Hawaii.

MR. HEMPLING: I'm asking what you mean by "affordability."

Can you give me more detail?

Do you mean the Company's rate of return?

You mean its ability to pay off its loans?

What are you talking about?

MR. MCINERNY: The ability to pay what we feel is fair. That's basically it.

MR. HEMPLING: That's not affordability. Fairness is a different concept. Fairness sounds to me you would compare it to wages paid elsewhere.

MR. MCINERNY: Okay. Then my mistake. Fairness.

MR. HEMPLING: So the two of you are arguing about comparing Hawaii wages to wages earned by similar employees elsewhere, is that what it comes down to?

MR. MCINERNY: Well, it gets -- I think it gets down to a convincing argument generally that has a lot of different aspects to it. It's not just one argument.

MR. HEMPLING: Right. Well, I guess, I want the Commission to understand all the aspects. Let's start with the indices.

So the union tends to go to California because that's where, what, the wages are the highest and the unions are most capable of getting high wages there --

MR. MCINERNY: Yes --

MR. HEMPLING: -- is that correct?

MR. MCINERNY: -- those are the highest wages.

MR. HEMPLING: And does the Company then look through other states and demonstrate that other states have different wages?

How do you respond to the indices argument?

MR. MCINERNY: I responded by saying this is Hawaii and this is what we have to deal with, this State, not California.

My basic response was the people in Hawaii pay the bills for our contract, not the people in California.

MR. HEMPLING: So where does that leave the two of you?

MR. MCINERNY: Talking.

MR. HEMPLING: Just like you and me?

MR. MCINERNY: Yeah.

MR. HEMPLING: What other factors do you take into account?

I guess I want to stick with affordability.

Does some higher-up in the Company give you a budget and say this is what we have to spend on employees, don't you dare go above; or, is it the other way around, that you go upstairs and you say, If I don't raise the wages here, I'm not going to have any employees to bargain with?

MR. MCINERNY: What I've done, since I was the manager, they ask for projections, and I --

MR. HEMPLING: "They" being?

MR. MCINERNY: Finance. They ask for a projection and I give them a projection for three years, what the next contract should be. And it's just based on budgetary concerns but, you know, I don't -- I don't -- I think I'm trying to predict what I think is fair and what I think is going to take place in the community; and, that's how I come to those conclusions.

Three years in advance is very difficult to predict what's going to take place; so, you're taking a shot and we've come in less in the past than what we budgeted. That was the first contract that it was less. The second contract was right on what we predicted.

MR. HEMPLING: Looking at the specific increases, the Exhibit ST-15B, is that yours?

Who's ST-15B?

I want to ask a few questions about the actual increases.

MR. MCINERNY: Okay.

MR. HEMPLING: So whose testimony is ST 15-B?

MR. MCINERNY: It's mine.

MR. HEMPLING: I hope you just didn't discover that.

(Laughter.)

MR. MCINERNY: No, no. The numbers confused me, I'm sorry.

MR. HEMPLING: Would you go to page 3.

MR. MCINERNY: Sure.

MR. HEMPLING: I've known people who've been handed their testimony a few minutes before they gave it.

MR. MCINERNY: No, no. I've had this.

MR. HEMPLING: That's what's cross-examiners call shooting fish in a barrel.

(Laughter.)

MR. HEMPLING: On page 3 -- excuse me -- you got a question that says, What are the wage increases that were negotiated and agreed to by the Union, and your answer, is, quote, Wages were agreed to increase by 3.5 percent, 4 percent, and 5 percent effective 11/1/2007, 1/1/2009, and 1/1/2010 respectively.

Do you see that?

MR. MCINERNY: Yes.

MR. HEMPLING: Was there any wage increase for the non-merit employees in 2007 other than this 3.5 percent increase referenced here?

MR. MCINERNY: No.

MR. HEMPLING: And is it possible for you to compare these percentage increases between 2007 and 2010 with any other wage increases at other utilities?

And if I were to ask you to put this in some kind of context for the Commission so they could assess it, would you be able to?

MR. MCINERNY: I would have to -- I don't think I have that document available at this point, but I would have to look for it.

MR. HEMPLING: You have something?

MR. MCINERNY: No, I don't, not right now.

MR. HEMPLING: No, I don't mean with you, but back in your memory you have something that you think would compare these increases to an indices?

MR. MCINERNY: I believe the last one was high.

MR. HEMPLING: I'm sorry?

MR. MCINERNY: The last one would be 4.5.

MR. HEMPLING: Relative to?

MR. MCINERNY: To most of what was happening. I believe my memory tells me it was 3, 3.5, 4., around there, 4 percent.

MR. HEMPLING: I'm asking so you think you have some document back somewhere that would reflect some type of comparison?

MR. MCINERNY: Yes.

MR. HEMPLING: Okay. I'm not sure what the procedure is for --

MR. KIKUTA: I guess one option is for the Commission to issue an IR to that effect.

MR. HEMPLING: Can we just use the last 30 seconds, because the IRs would have to be writing.

What's your --

MR. KIKUTA: Okay.

MR. HEMPLING: -- procedure?

MR. KIKUTA: So it would be, I guess, we could submit that as an hearing exhibit.

CHAIRMAN CALIBOSO: Mr. Hempling, maybe you could restate the request for the Commission?

MR. HEMPLING: Yeah, I'm not asking the Company to create anything new. If the Company has a document that Mr. McInerny knows of that reflects a comparison of any of these percentage increases set forth on page 3 of Exhibit ST-15B with other wage increases among utilities, that would be the request. It's not a request for a new study.

MR. MCINERNY: Okay.

COMMISSIONER KONDO: Mr. McInerny, can I probe your memory?

I'm sorry, Mr. Hempling.

MR. HEMPLING: Go ahead, sir.

MR. KIKUTA: No, no. That's all right. We will submit that.

COMMISSIONER KONDO: I understood you to respond to Mr. Hempling's question to say that a .5 percent increase in beginning 1/1/2010 that that was, quote, high versus what you recall other similar utilities wage increase for non-merit employees to be; is that correct?

MR. MCINERNY: Yes.

COMMISSIONER KONDO: Why would you agree to a number that you thought was on the high side?

MR. MCINERNY: You know, to be honest with you, it's not my ultimate call, and it wasn't my ultimate call.

COMMISSIONER KONDO: And whose call is that?

MR. MCINERNY: It was the call of the person in charge at the time.

COMMISSIONER KONDO: And who was that?

MR. MCINERNY: His name was Tom Joaquin, and, I, believe, it was the CEO at the time.

COMMISSIONER KONDO: It would have been Mr. May?

MR. MCINERNY: Yes.

COMMISSIONER KONDO: Do you recall at the time the CBA was negotiated, this last one, as to what your recommendation was with respect to the non-merit increases for those three years?

MR. MCINERNY: Yes.

COMMISSIONER KONDO: What were they?

MR. MCINERNY: 3.5, 3.5, 3.5.

COMMISSIONER KONDO: Do you know why the -- Mr. Joaquin and/or Mr. May decided to agree to numbers that were higher than 3.5, 3.5, and 3.5?

MR. MCINERNY: Not specifically.

COMMISSIONER KONDO: What was your reason for recommending 3.5?

MR. MCINERNY: Because I projected that three years prior to that and I felt that would be a fair amount; and, at the time, I mean, when you do that, you know, my belief is you have to strive towards that, and that's what I was striving for.

COMMISSIONER KONDO: I'm sorry, I cut you off maybe on your last answer when I asked you if you know why Mr. Joaquin and/or Mr. May decided not to go with your 3.5 recommendation.

I said -- think you said not specifically.

How about generally, do you have a general understanding as to why they decided to move in a different direction?

MR. MCINERNY: Well, generally, the Bargaining Unit rejected the contract; so, you get down to whether or not you're willing to take the strike or not.

COMMISSIONER KONDO: Do you provide any guidance to

Mr. Joaquin or Mr. May as to your understanding as to how tough the Union would take in terms of a stance; in other words, would they have striked, would they have struck, whatever the right word is?

MR. MCINERNY: There are two parts to the negotiation. The first part Tom used me in an advisor capacity.

COMMISSIONER KONDO: Tom is Mr. Joaquin?

MR. MCINERNY: Mr. Joaquin.

And then the second part was actually the Union rejected the 3.5 percent; and, then we got into this full-on meeting, et cetera, with all of the committees, et cetera, so --

COMMISSIONER KONDO: The committee is who?

MR. MCINERNY: The committee, they had about I'd say about 15 people. That's their board -- board members and the people they choose to be on their committee, the Union committee.

COMMISSIONER KONDO: The Union committee, thanks.

MR. MCINERNY: I'm sorry.

So the discussions took place in the form of the normal Union Hall and under those circumstances. You know, you evolve. They had taken a strike vote and they voted to strike. And the evolution of this took place during the course of those discussions with their committee, and they brought in the international representative from IBW. He's paid by the International Union, and he was their negotiator. So they changed negotiators at the last, and his stance was the members have spoken. This 3.5 is not going to do it, so you have to continue to negotiate, and that's what took place.

COMMISSIONER KONDO: If I can really switch gears, Mr. Hempling, with your indulgence real quick.

Has the Company gone back to the Union to attempt to renegotiate the wage increase?

MR. MCINERNY: No, we haven't.

COMMISSIONER KONDO: Has the Company ever done that as far as you're aware?

MR. MCINERNY: Not that I know of.

COMMISSIONER KONDO: Do you know why that is, with respect to this contract, why the Company has not gone back to attempt to renegotiate the non-merit wage increases?

MR. MCINERNY: In this case, what happened after the negotiations was the people who were in charge of the Union were defeated in the next election; and, that is part of a fallout of all the things that we went through.

So there's a brand-new business manager who basically I would say is -- has a different agenda, and he's a little bit more adamant about things.

We don't really believe that we'll have any success in going back and trying to accomplish that with this particular business manager; and, it would be difficult, even with the old business manager, because you really have to demonstrate more of a poverty situation in the Union business.

From the perspective of a guy who negotiated for Union contracts for 10 years, I was very hardheaded, and I was hardheaded because that I was my job; and, there were companies in trouble that came back and tried to ask me to change contracts and I just said no; unless, you're going to tell me you're going to go out of business.

So if I was going to make an estimate, those are the kind of things that would go through the head of the current labor guys. I believe --

COMMISSIONER KONDO: Has it -- I'm sorry.

MR. MCINERNY: Sure.

COMMISSIONER KONDO: Has there been any discussion internally within the Company as to whether or not the Company should go back to try to renegotiate the non-merit wage increases that you've been involved with?

MR. MCINERNY: My boss asked me the chances and I said none.

COMMISSIONER KONDO: And the reason why I ask that is because I hear the Company has come to the Commission frequently, as well as in this rate case, saying that they're hurting financially; and, I hear Mr. Alm multiple times saying that we're going to share the pain.

Is that not a basis to attempt to go back to seek some renegotiation of the labor non-merit employee wage increases because of the financial -- current financial condition of the Company as well as looking at the general economic situation of the State?

MR. MCINERNY: To be honest, that wouldn't be a premise for them to agree. You know, if we're making any kind of a profit, they wouldn't agree. I mean, you want my estimated guess based on years in the business, given the set of circumstances; one, dealing with the new business manager, he wouldn't agree.

COMMISSIONER KONDO: All right. Thank you.

Thank you, Mr. Hempling.

MR. HEMPLING: Turning to this testimony that you have on the lineman's survey. It's your testimony ST-15B on pages 4 and 5.

So, I think, you said that there's really only one useful wage rate index, and that's for lineman because that job is commonly defined in homogenous across multiple utilities. Correct?

MR. MCCORMICK: I --

MR. HEMPLING: Sorry, you were flipping pages and I was --

MR. MCINERNY: Yeah.

MR. HEMPLING: -- talking.

MR. MCINERNY: Okay. No, I heard you. I don't know if I said it was useful or I said that was what they used as a comparison since I've been in this business.

MR. HEMPLING: And is that used just for the lineman or do they then use that as an index to measure other positions than their wages?

MR. MCINERNY: No, we just -- all they release is the lineman position. That's --

COMMISSIONER KONDO: Right. What I'm asking is I was confused on this.

Do you use it to estimate other salaries based on their relative stature or relative to the lineman position?

MR. MCINERNY: Yeah, we use it for that to see where we fall within the scope of things and to be aware because the Union will bring up that argument.

We don't use it necessarily to calculate what we're going to do, not necessarily, that we want to occupy a medium space, or whatever, part on that hierarchy.

MR. HEMPLING: But you're using your position in the ranking of lineman's salaries, not just to talk about lineman positions, but to talk about other positions too?

That's what I'm asking.

MR. MCINERNY: No, we've gone with a percentage increase over the years. That was established by the -- you know, when I came in. So nobody has taken upon themselves to want to change that; so, the percentage has been across the board when you negotiate. It's not just for lineman. We haven't separated the group.

MR. HEMPLING: Maybe I'm not being clear.

In other words, when you look at the way in which the lineman's salaries have changed over time in this PUEI index, you take that percentage and talk about applying it to all the other positions as well, not just the lineman's position; is that correct?

MR. MCINERNY: Correct.

MR. HEMPLING: Okay. I got it now.

So, in your testimony, you said that, in 1995, HECO was ranked second highest in lineman wages out of the 14 companies that responded; is that correct?

MR. MCINERNY: 1992, I believe. I know I said '95, but during the course of our questioning and our going over things, you know, we came up with numbers. Ninety-five was because that was the end of the contract but the contract actually started in '93.

MR. HEMPLING: Just a second. I just want to make sure I under this.

The excerpt I have from your testimony says 1995.

MR. MCINERNY: That's true.

MR. HEMPLING: Okay. But it's also 1992?

MR. MCINERNY: It started in '93.

MR. HEMPLING: Okay.

MR. MCINERNY: That was the contract that started it.

MR. HEMPLING: Right. But the ranking of second out of 14 is 1995, according to your testimony?

MR. MCINERNY: Yeah, it was according to my testimony, but it was actually started in '92.

MR. HEMPLING: The ranking?

MR. MCINERNY: Yes.

MR. HEMPLING: Okay. I know the contract started by the ranking also?

MR. MCINERNY: Right.

MR. HEMPLING: All right. You know I'm very precise; so, are you, I can see that.

MR. MCINERNY: I'm trying to be.

MR. HEMPLING: That's great.

And then in 2009 your testimony says the Company was ranked 11th --

MR. MCINERNY: Yes, yes.

MR. HEMPLING: -- out of the same 14?

MR. MCINERNY: True.

MR. HEMPLING: So that's what I want to focus on for a second.

What are the explanations for that change in the status of the Company?

MR. MCINERNY: The wages.

MR. HEMPLING: I know that. That's what we're talking about, but what's the reason why?

MR. MCINERNY: Well, we didn't -- we didn't catch up, but we're kind of falling back with the wages that we had.

MR. HEMPLING: Right.

MR. MCINERNY: The mainland companies had larger amounts. They did have, I guess, competition for a lineman and electrical people at some point in the mainland; California, in particular.

MR. HEMPLING: HECO had competition?

MR. MCINERNY: Not us. No, they were amongst themselves. They were striving to get a track lineman to -- from one Company to the other, et cetera, et cetera. It became a --

MR. HEMPLING: There was a bidding war on the mainland that made wages go up over there without your wages going up comparably, that's what you're saying?

MR. MCINERNY: That wasn't the only cause but it is one of the causes.

MR. HEMPLING: So how did the Company manage to -- given what you said about the unions and their ability to negotiate, how did the Company manage to have its relative wage slip like that?

I mean, that would sound like a feather in your cap.

MR. MCINERNY: You know I don't look at it that way. I don't -- our goal was to be at a certain level over the years then. That's what I strove for. And it's not a question of trying to keep people down. You got to, kind of, estimate what's fair in the community.

And everything that I did in negotiations was based on trying to be fair in this community for this State, and, I spent a lot of years as a Union negotiator, negotiating pennies for competitive companies, that it was difficult; and, you have to get some feeling for the community and for the people when you go through that.

So, you know, this is based on what I think was fair during that period of time. I didn't believe we should have been number two but, you know, it worked that way. So, at some point, you strive to do the best you can to get us back into the ballpark.

MR. HEMPLING: You're basically trying to strive somewhere for the middle, is what you're --

MR. MCINERNY: That's what we're trying for.

MR. HEMPLING: That's what you mean by "fair?"

MR. MCINERNY: Right.

MR. HEMPLING: So were there any consequences in terms of productivity based as a result of this relative fall in wages for the lineman or for anybody else?

MR. MCINERNY: Well, I believe the consequences are perception. That's why we had the turndown on the last contract. They perceived that they've falling behind and that they're not in the right position that they would like to be.

MR. HEMPLING: So this specific drop in ranking, that you've described in your testimony here, was something that came up in the last negotiations?

MR. MCINERNY: Absolutely.

MR. HEMPLING: In just the way we're talking about it?

MR. MCINERNY: A little bit more colorful probably.

MR. HEMPLING: I can get there. I grew up in New Jersey.

(Laughter.)

MR. HEMPLING: And, again, this would have been the case, this concern about drop and ranking would have been the case, not just for the lineman's positions, but for other positions as well?

MR. MCINERNY: Certainly, certainly.

MR. HEMPLING: Has the Company -- and maybe this doesn't go to you and maybe it goes to somebody else -- had more difficulty staffing lineman positions since this drop in ranking?

MR. MCINERNY: You know, I can't give a specific answer to that. I can give you an idea.

We, basically, have apprentices, and that's how people get to be lineman. Over the years, as we've tried to attract people from the mainland, we've been able to attract a few; but, maybe, for the allure of living in the islands for a while; but, after they've been here a couple of years, they take off because the joy of paradise becomes diminished based on their financial conditions. And we've lost a lot of lineman that we've brought over that we've attracted and, you know, it's apparent that there are some problems with them adjusting; and, that's just basically our general sense and mostly on the outer islands.

MR. HEMPLING: So do you have a feel of pulling these two strands together, do have a feel whether the recent increases, the ones we discussed, that is the 3.5 percent, the 4 percent, and the 4.5 percent, did those have a change, do those cause a change in a relative ranking?

MR. MCINERNY: I don't -- I don't know for sure. I can't tell you.

MR. HEMPLING: Okay. Because the 2009 data says you're 11th out of 14; and, so that would take into account, at least the first two increases. Correct?

MR. MCINERNY: Correct. But I'm not in recruitment, so I wouldn't know.

MR. KIKUTA: Mr. Hempling, in response to your question concerning recruitment of lineman, Ms. Chiogioji can provide some additional information.

MR. HEMPLING: Okay. Does she have any further elaboration on what we've just been talking about?

Good morning. How are you?

MS. CHIOGIOJI: Good morning.

I think you had a question about our experiencing more difficulty in filling lineman positions, and so we saw started the change in ranking.

MR. HEMPLING: Why don't we start with were you having difficulty filling them and then we'll talk about what is attributable to it.

Any difficulty in --

MS. CHIOGIOJI: Our lineman positions we recruit. Because it's very utility-specific positions, we basically recruit without a prerequisite for that experience; so, we don't experience difficulty in recruitment for those positions because we have an apprenticeship program that provides the training for them.

MR. HEMPLING: But what about this problem of they're staying around after they've been trained that Mr. McInerny just referred to?

Is that your observation also?

MS. CHIOGIOJI: A concern about the lineman is the retirements, because it takes so long for them to become experienced, and that becomes a concern for us. We're not able to recruit from the mainland for lineman; or, when we have tried to do, we've been unsuccessful in having them stay.

MR. HEMPLING: So the recruitment process is finding untrained people here and training them and then hoping they stay here as opposed to moving?

MS. CHIOGIOJI: That's correct.

MR. HEMPLING: So the other reason we're focusing on lineman, in this particular moment, is because that's what the index is, but we'll talk about other positions in a moment.

Now you are familiar with the vacancy rates for the lineman?

MS. CHIOGIOJI: I don't have the vacancy rates specific to lineman. I'm familiar with the vacancy rate in general for the Company.

MR. HEMPLING: And could you say anything about the trends in the vacancy rate over some period of time?

MS. CHIOGIOJI: We took a look at the vacancy rate, and where we are today based on staffing today -- why don't I pull out my notes, please.

Our total staffing today is at 1,605 employees as of September 30th. Based on our updated regression, it appears that we may have taken out too much. A vacancy rate that we agreed to in the settlement was 2.7 percent. Our current vacancy -- or 2.68 percent, excluding the power supply operations and maintenance divisions.

As of September 30th, 2009, we did a new regression, and we find that we are 2.38 percent, excluding the power supply operations and maintenance divisions.

The settlement resulted an equivalent of 35 employees reduced from the test year average. Today our vacancy rate would have resulted in an adjustment of 31 employees instead.

MR. HEMPLING: I may not be smart enough to catch all that, but does that mean that you're paying for four employees that you're not getting compensated for in the settlement rates?

MS. CHIOGIOJI: Could you repeat that again?

MR. HEMPLING: I rather you did.

What I'm asking is, Are you saying that there's some quantity of employees whose salaries you're paying, but the costs of which are not being reflected in your settlement rates?

Is that what you're saying?

MS. CHIOGIOJI: Correct.

MR. HEMPLING: How many?

MS. CHIOGIOJI: Four.

MR. HEMPLING: That's what I thought. I thought I had it --

MS. CHIOGIOJI: Yes.

MR. HEMPLING: -- right. Okay.

MS. CHIOGIOJI: Thank you.

MR. HEMPLING: I'm asking then are their trends in that vacancy rate over some period of time that you're familiar with?

Are you familiar with the history of vacancy rates in the Company?

MS. CHIOGIOJI: I think we did that in the analysis. In establishing the vacancy rate for the purposes of settlement, we took a look at the historical, actual employees on staff against the budget, and we provided that data for the purposes of their analysis.

MR. HEMPLING: Right. I'm just asking you, Can you tell us anything about the trend in vacancy --

MS. CHIOGIOJI: Oh --

MR. HEMPLING: -- rates --

MS. CHIOGIOJI: -- okay.

MR. HEMPLING: -- over time?

MS. CHIOGIOJI: All right. What we have observed over time was that we were getting better at filling our positions, and we were starting to be closer between the budget and actual amounts.

MR. HEMPLING: Right. But what about actuals over time?

Is this 2.38 percent representative of a history or does it vary from some history?

MS. CHIOGIOJI: Right.

MR. HEMPLING: That's what I'm asking.

MS. CHIOGIOJI: Oh, okay. The 2.38 percent takes into account where we are today in going over a period of -- pardon me -- dated from 2005.

MR. HEMPLING: Okay. I guess I need that explained. I know you used the word regression, and that's not exactly junior high math.

What does this 2.38 percent represent?

Does that mean that, at this point in time, 2.38 percent of the positions created in the Company are unfilled or does it represent something else?

MS. CHIOGIOJI: I think you are correct. The 2.38 percent presents the vacancy, the difference between what we have in our budget versus what we have actually filled.

MR. HEMPLING: Okay. Now, as of now?

MS. CHIOGIOJI: As of now.

MR. HEMPLING: Okay. Do you have any idea what was the number one year ago, or two years ago, or five years ago?

Any feel for how that number has changed over time?

MS. CHIOGIOJI: I don't have that number with me at the moment.

MR. HEMPLING: Is there some -- again, without creating new information, is there some Company information that you have access to that would help the Commission understand if the 2.38 percent is customary or unusual?

MS. CHIOGIOJI: The data was provided in HECO T-15, Attachment 1, beginning on page 3 of the final settlement.

MR. HEMPLING: Okay. I'll find it.

And what does it say now that you're looking at it?

What can you tell the Commissioners, as they're sitting here, about whether this 2.38 percent is representative or not representative of your past? Anything?

While you're looking that up --

MS. CHIOGIOJI: Oh, okay.

MR. HEMPLING: Okay, go ahead.

MS. CHIOGIOJI: Your question was what did it look like one year ago?

MR. HEMPLING: Well, that was one of my last 10 questions, yes.

MS. CHIOGIOJI: So but one year ago, September 30th, 2008, the vacancy rate was 4.5 percent -- 4.05 percent.

MR. HEMPLING: Okay. How far back does that -- how many years does that ruler go?

MS. CHIOGIOJI: The data that I'm looking at goes back to January 31, 2007.

MR. HEMPLING: Okay. Any information prior to that, prior to 2007, that you know just from your history in the Company?

Mr. Alm, do you know any of this, any sense of the vacancy rates over time or is this a good period or a bad period?

MR. ALM: I think we probably have information that goes back before that. I can provide that, I think. We were looking at it since the rate case cycle started.

MR. HEMPLING: Okay. Gentlemen, Consumer Advocate witnesses, do you have any feel, just give the Commissioners a feel for whether this vacancy rate is customary or not customary, or a warning, or what?

Mr. Carver?

MR. CARVER: Yes, I spent a fair amount of time looking at the actual and budget head counts in reviewing the Company's regression analyses, and we had several discussions about it.

I would say, generally, that over time, the vacancy rate has been declining or moving closer to a zero vacancy rate. However, at some point in time, and I can't remember the trigger, it might have been 2005, 2006, the Company revised its budgeted position levels. They weren't able to fill all their position levels that created a higher vacancy rate perception.

Once they changed and revised their budget level, to something that was more achievable, just that difference in the budgeting process created what appeared to be a significant improvement in the vacancy rate.

So for purposes of the rate case, what we and, I believe, the Company ultimately focused on is the more comparable vacancy rate data after the budgeting process in terms of employee head counts was revised.

So it is improving; but, since that change, I don't believe it's gone from 4 percent to 2.38 percent, but I don't have the data in front of me.

MR. HEMPLING: Help us understand the concept here.

Is there anything about vacancy rates that can help a Commission assess the reasonableness of the Company's employment costs; or, are there too many other factors that are irrelevant?

MR. CARVER: I think vacancy rates can play a portion, it can play a part of it. I think our vacancy rates have been higher, in particular, in power supply and in energy delivery than they have been in other areas of the Company. I think those skilled positions are a challenge, not only here, but across the country; particularly, power supply.

And so we've had a continuing challenge with filling the power supply positions, as we've gone over in prior rate cases. I mean, it's a significant and standing problem.

MR. HEMPLING: What's your --

MR. CARVER: We tried it, if it has a -- yes, it has a -- it does play a part in this.

MR. HEMPLING: I'm asking about the reasonableness of expenditures.

Is there anything about a vacancy rate that gives the Commission any guidance as to the reasonableness of expenditures?

MR. CARVER: I think it might be helpful for the Commission to understand how that vacancy rate was applied. In the Company's forecast of the labor costs, they assumed that the budgeted level of employees, with certain exceptions, would be filled during the forecast test year.

Looking back in history, we knew that the Company has been unable to achieve full employment, so the vacancy rate is a mechanism to rachet down or decrease the labor costs included in the rate case forecasts to account for this inability to achieve full employment of the budgeted position.

So I think it's useful information. I think it helps better reflect the labor costs that are included in the forecast test year; so, yes, I think it's helpful in that respect.

MR. HEMPLING: Anything to add, Mr. Brosch, on this?

MR. BROSCH: I would only add that that there are -- there were recurring themes where other electric utilities I've observed have explained a problem with the maturing of skilled workforce; particularly, engineering staff, for example, and there's really no way to achieve full employment. There's always this vacancy issue.

You can look at it over time and make some observations about perceived improvement or not, but sometimes the data is clouded by major changes in the staffing assumptions or budget levels; so, that complicates it. And Mr. Carver was, kind of, pointing to that when he mentioned that it wasn't really contiguous data across all those years.

MR. HEMPLING: Okay. Let's turn to -- thank you.

Let's turn to merit employees.

COMMISSIONER KONDO: Before you move on, Mr. Hempling, can I ask some questions --

MR. HEMPLING: Oh, sure.

COMMISSIONER KONDO: -- of Ms. Chiogioji?

I know at the beginning you made a comment to Mr. Hempling that, from your perspective, the challenge you have of retaining linemen is because they're retired; is that correct?

MS. CHIOGIOJI: It's important for us to ensure that there's a continual stream of new apprentices being hired, because the apprentice you hire today, if it's not going to be the journey -- at the journey level for another seven to ten years.

COMMISSIONER KONDO: For other non-merit employees, is the challenge similar that you are experiencing retirement and that's the challenge to keep staffing levels at the appropriate level?

MS. CHIOGIOJI: It's not just -- it's not just due to retirement, but that is part of it. It's also because there is competition in the local workforce. My staff --

COMMISSIONER KONDO: What type of competition?

MS. CHIOGIOJI: There is competition in the local workforce for employees.

COMMISSIONER KONDO: Who is the competition?

MS. CHIOGIOJI: They include contractors, they include original equipment manufacturers, consultants, consulting firms, that's for the merit employees, the professional staff.

Mr. McInerny, Ms. Furuta-Okayama gets part of their data from my staff, who works to fill the positions; and, so we'll let them know. So I'll give you an example, the recent experience.

A control technician, that is a Bargaining Unit, a non-merit position, we currently have seven vacancies for the control technicians. We've had difficulty to fill them because it's a specialized field, very few people on the island with industrial-processed control backgrounds.

Now control technicians operate and maintain or maintain the equipment in the control room in the power plants.

Okay. Why? Comparatively our pay is considered low. The experienced control technicians earn more by working as contractors. A recent contractor, who was interviewed, shared his salary, $40 an hour plus $125 per day per diem. It comes out to 128,000 per year.

Due to our line of progression and Collective Bargaining Agreement rules and line of progression of seniority, some very fundamental concepts in Collective Bargaining, due to our line progression and Collective Bargaining rules, we're not able to bring in an experienced control tech at a higher level than a control mechanic.

As a HECO control mechanic, our pay is $31.27 an hour or 65,000 per year.

COMMISSIONER KONDO: Of the non-merit employees who leave --

MS. CHIOGIOJI: That's correct.

COMMISSIONER KONDO: -- the Company's employment?

MS. CHIOGIOJI: This is a -- this is a position we tried to fill and a candidate who declined our position.

COMMISSIONER KONDO: Well, thank you for the explanation.

But my question is for the non-merit employees who leave the Company's employment, what percentage of those people go to a competitor?

MS. CHIOGIOJI: I'm sorry, I don't have that data broken down by non-merit or merit of exactly which of them go to competitors.

COMMISSIONER KONDO: What percentage of the non-merit employees who leave the Company's employment retire?

MS. CHIOGIOJI: I don't have it down, but we can look it up in the Bargaining Agreement booklet.

COMMISSIONER KONDO: What about total employees --

MS. CHIOGIOJI: Okay.

COMMISSIONER KONDO: -- who leave the Company, how many -- what's the percentage that retire?

MS. CHIOGIOJI: Okay, thank you. In 2008, 25 percent of our separations were due to retirement.

COMMISSIONER KONDO: Do you have figures for other years?

MR. MCINERNY: Yes, yes. 2007, 44 percent; 2006, 36 percent; 2005, 41 percent; 2004, 60 percent; 2003, 57 percent. My data goes back only to 2003.

COMMISSIONER KONDO: Okay, thank you.

Is it your opinion that the retirements are caused because of lack of pay; or, what I mean by that is because they are not receiving pay that they believe is comparable for their job in the department, the retirements?

Does it have anything to do with pay?

MS. CHIOGIOJI: I can't say that. I am aware that in totally that there are employees who retire and then go to work for other contractors. Sometimes we see them working for contractors that do work for us.

COMMISSIONER KONDO: If they received and, perhaps, this is maybe making you guess, and if you can't answer, that's okay; but, if they have received a wage increase versus no wage increase of the percentages that we were talking about for non-merit employees, would that have made a difference on the retirement decision?

MS. CHIOGIOJI: That would be -- that would be a guess.

COMMISSIONER KONDO: I don't want you to guess. That's okay. Thank you.

Mr. Carver, I have a question before we move on.

I know that one of your first comments to Mr. Hempling was that you find it difficult to challenge wage rates, competitive wage rates, CBA wage rates.

Could you explain why that is, because I'm assuming that that answer also is based upon the fact that the Collective Bargaining Agreement is not approved by the Commission; and, with that assumption, could you explain that answer?

MR. CARVER: Certainly. I had been involved in a few utility rate cases over the years where there were challenges to some Bargaining Unit Agreements or wage increases. I was not the witness in those proceedings, and it was many, many years ago; but, Bargaining Unit Agreements is a very, very sensitive topic. I was amazed at the public press response and the Bargaining Unit members' response, to the quote/unquote Audacity of the regulators to even consider going after an arm's length negotiated, you know, wage rates.

And it's not that the Commission was attempting to aggregate those -- that Agreement but rather was trying to determine whether or not those costs resulting from that Agreement should be borne by utility ratepayers, whether the costs were reasonable.

And it makes for a very difficult and politically charged environment that you really -- in my view, for me to challenge those wage rates, I need information that shows that the results are wholly out of line based upon the local economy, as well as the competitive marketplace. And what I have seen, while I haven't conducted an independent study here, as I mentioned earlier, I haven't gotten the sense that these wage rates are out of line.

COMMISSIONER KONDO: When you make that analysis, do you focus on the time when the Collective Bargain Agreement were entered into; or, are you focusing on the present, given the current economy and given the current levels of wage increases that are in the Collective Bargaining Agreement?

MR. CARVER: Typically, it's based upon competitive salary surveys that are most often highly confidential documents where a third party has attempted to collect data.

COMMISSIONER KONDO: No, I'm --

MR. CARVER: So there's some staleness in the information because the data collection is not current but may be a year or 18 months removed from the current period.

COMMISSIONER KONDO: Okay. When you're making your determination that it's not out of whack, are you looking at the time that the Collective Bargaining Agreement was negotiated; or, are you looking at the present today in determining whether or not the present wage increases are in line with the economy and other factors?

MR. CARVER: Really, it's more of a -- whether it was reasonable at the time the contract was negotiated. It's real difficult to -- for me to engage in 20/20 hindsight. I try to look at the facts and circumstances as they existed at the time the decisions were made whether we're talking wage rates or many other issues that have decisions with a long tail on them; so, it's really whether it was reasonable at the time the decision was made.

COMMISSIONER KONDO: And how do you look at it if the current conditions make the wage increases out of whack?

Do you ignore that, because you're focusing on the time when it was initially entered into?

Could you explain how you look at the current economic conditions with respect to the wage increases?

MR. CARVER: I guess I would have to say that, particularly for purposes of this case, I did not conduct the analysis that you're suggesting in terms of do the current economic conditions make the 4.5 percent merit or non-bargaining unit wage increase negotiated several years ago unreasonable.

I didn't have a sense that there was -- that the rates they've committed to pay were unreasonable; so, I didn't take that next step and say, Is the result different if I taking into account the current economic situation which I certainly hope is a temporary matter and not a long-term matter.

COMMISSIONER KONDO: If I can restate what you just said, so that I can see if I understood it.

You're basically saying you looked at the bottomline number, meaning the wage -- I'm sorry, the revenue increase that the Company has requested in the rate case determined that was reasonable and, therefore, you didn't make the analysis of a line item relating to non-merit wage increases; is that right?

MR. CARVER: No, that's not --

COMMISSIONER KONDO: Okay.

MR. HEMPLING: -- correct.

COMMISSIONER KONDO: I'm sorry. Could you explain that again then?

MR. CARVER: We're talking about wage costs. I looked at wage costs, I looked at standard labor rates resulting from the Bargaining Unit increases. I didn't have any belief that those standard labor rates for the Bargaining employees were unreasonable. Therefore, I didn't do any additional analyses to see if my conclusion would be different if I took into consideration current macroeconomic situations that the country and the world is in right now.

That's my point. It wasn't the overall revenue requirement. I looked at the standard labor rates that result from these Bargaining Unit increases.

COMMISSIONER KONDO: Given your understanding of the economy in the world as well; more, specifically, in the State of Hawaii, is it not responsible for the Commission to consider the current economy in deciding whether or not the wage increases that are in the CBA are reasonable, prudent in the public interest?

MR. CARVER: I think that it's well within the Commission's prerogative to ask those questions and voice those concerns. However, I do have concern as to whether the Commission might be attempting to go behind a Collectively Bargained and negotiated set of wage rates. I don't know what the ramifications of doing so might be on a broader scale.

COMMISSIONER KONDO: And I appreciate that answer. And, you know, I struggle to understand, you know, how to look at this as well.

But my understanding is the Commission or the role of Commission is to provide some competition that's not available in the market, that doesn't exist in the market; and, if I look at other industries, perhaps, and maybe this, perhaps, is not a fair example, but the airline industry. I see them going back to renegotiate their labor contracts because their costs are out of whack and I hear the company talking about how they're struggling.

Is that a situation where the Company should make a bigger effort to perhaps look to renegotiate labor contracts?

I heard Mr. McInerny and I'm not disputing that that it would not be successful, but I don't even see the Company taking a step.

Is that not something the Company should look at?

MR. CARVER: Well, I certainly think it's a matter of management judgment and in whether or not they think that not only from the current situation but their long-term relationship with the bargaining unit, if it's worth expending the political capital to do that; but, while I haven't done any detail analyses, there may only be one airline in the U.S. that's making any money.

So to use or borrow from something that

Mr. McInerny said earlier, if you're losing money and you're on the verge of closing your doors or laying off thousands of employees, I think you tend to get the attention of management under those circumstances; so, I don't know that that's a straight apples to apples example.

COMMISSIONER KONDO: Okay. And, like I said earlier, I'm not sure it was a fair analogy.

Mr. McInerny, can I ask you a couple of more questions too before we move off the subject?

CHAIRMAN CALIBOSO: I have some follow-up questions of Mr. Carver first.

Mr. Carver, I sense a feeling of giving some difference to these Collective Bargaining Agreements that were negotiated, perhaps, two or three years ago; and, again could you summarize the reason for that?

MR. CARVER: The reason for that?

CHAIRMAN CALIBOSO: Yes.

MR. CARVER: You know, Bargaining Units exist for a reason and maybe the reason today is different than the reason 30, 40, 50 years ago, but it does provide a forum for utility management in this case and those employees under Collective Bargaining to come to the table and address not only compensation in terms of wages but also benefit programs, retirement programs, trying to represent both the Company and the employee interests.

Whenever they sit down at the bargaining table and in good faith go through what are likely contentious meetings to debate how high is too high and how low is too low, I think, in my personal opinion, unless that balance that struck through those negotiations are completely out of line and out of whack, I think it's real difficult to go after those compensation and benefit arrangements and go behind those agreements and deny the Company recovery of the bargain for costs that result from those labor agreements.

CHAIRMAN CALIBOSO: So you're assuming a fair bargaining process, equal bargaining positions, and leverage?

MR. CARVER: Yes, I am. And I'm not aware that that's not the case here.

CHAIRMAN CALIBOSO: So once there's an agreement, it's your feeling that there should be some deference given to those Collective Bargaining Agreements?

MR. CARVER: Yes.

CHAIRMAN CALIBOSO: So if that's the case and every time there's a Collective Bargaining Agreement that lasts for several years and you do a rate case, those agreements would be a given in our rate cases.

Is that what you're saying basically?

MR. CARVER: Yes, unless there's some reason to believe that the result is wholly out of line and produces unreasonable rates.

CHAIRMAN CALIBOSO: So would there ever be any way for regulatory commissions to try to control that type of expense on behalf of consumers, you know, before an agreement -- before an agreement is reached, could some signals be sent, some other parameters be set before an agreement is reached, and how would that -- or maybe Mr. McInerny can answer this question later, how would that affect the bargaining process?

MR. CARVER: I can't comment how that might affect the bargaining process. I think making the Company aware that the Commission has a concern in that area. Certainly, I would hope would be a factor management would consider the next time it sits down at the bargaining table; but, the Commission, if it believed that the resulting labor costs, including benefits were excessive, the Commission can make a prudent disallowance if it feels it has the evidence in that regard.

But as a witness who sponsors adjustments and presents issues before regulatory bodies, that's a very difficult burden to present to the Commission when it is the result of a Collective Bargaining Agreement.

CHAIRMAN CALIBOSO: What about some kind of decision that's more prospective in nature and they're applied to the future, Collective Bargaining Agreements and negotiations?

MR. CARVER: I don't know what form that would take. I haven't seen anything that's been done around the country. I don't know if there's a way for the Commission to advise the Company to keep them abreast of future developments, although there may be some labor laws that limit their ability to communicate with the Commission while, you know, negotiations are ongoing. I'm not an attorney so I don't know for sure, but there may be some restrictions there in communications with third parties.

CHAIRMAN CALIBOSO: Maybe one example might be with respect to merit employees, and you're familiar with the Commission -- I mean, the Company's goal to try to keep some distance or cushion between merit and non-merit employees, roughly, 10 percent?

MR. CARVER: Yes, I understand that.

CHAIRMAN CALIBOSO: What if the Commission were to limit the merit employees' wages and then it would be up to the Company to keep that same cushion when they negotiate the next Collective Bargaining Agreement?

MR. CARVER: The Commission certainly could try that option. I'm not certain that the Bargaining Unit is going to much care whether their supervisors have their pay limited --

CHAIRMAN CALIBOSO: Well, it would be more than the Company caring. Right?

MR. CARVER: Well, the Company would have a concern and would care, but I don't know whether when Mr. McInerny sits down at the bargaining table with the Union representatives that they're really going to care about whether their supervisors had their pay limited.

Now as I --

CHAIRMAN CALIBOSO: I guess what I'm getting at, Mr. Carver, is if the Commission sends that signal, and the Company negotiates a Bargaining Agreement that does not have that same cushion; and, then they seek to recover it in the next rate case, it seems, to me, that the Company may not have the same defense that it did not know that it could not redo something higher.

MR. CARVER: Now, I better understand your question. Certainly, the Company would have advanced notice, but the Company is only one of the two parties at the bargaining table. And what I was trying to convey is that the other party, that being the Union, may be indifferent whether the Commission is trying to send a signal.

I don't know that that indirect instruction from the Commission, whether it will have a meaningful impact on the bargaining results. It may. I don't know. I'm just saying that I don't know that the Union representatives will pay it much attention.

CHAIRMAN CALIBOSO: It almost doesn't matter if it has an impact on the bargaining results, right, it just matters what the Company gets to recover?

MR. CARVER: I guess you could certainly try to use that as a benchmark.

CHAIRMAN CALIBOSO: Thank you.

MR. MCCORMICK: Chairman Caliboso and Mr. Hempling, the DOD would like to just make a general comment at this point.

MR. HEMPLING: Go ahead.

MR. MCCORMICK: I guess the features on these questions you're asking is not aimed at this case indirectly; but, having some experience in teaching law, I'd just like to basically call the Commission's attention to the fact that the National Labor Relations Act and the National Labor Relations Board policy very strongly favor Collective Bargaining Agreements.

They practically prohibit any third-party interventions in those, and they even discourage the parties to the Collective Bargaining Agreement from trying to change an agreement after it's been completed within the term of that agreement.

Basically, the general options remaining are when there's a financial difficulty or other, would be for the two parties, if they can't -- if a company, for example, cannot convince its employees of voluntarily reopening negotiations, the only real option remaining is to basically try to bust the

Union going nonunionized, or whatever, which is the option several major airlines have followed.

And I may be wrong on this, but my understanding is that federal and state law are the only things that actually regulate or limit the salaries; and, that if an agency, such as this, that is regulating, wants to effect that, they probably need to go to some area of the rates to effect it, and it will be up to the Company to figure out how they're going to compensate for what they are required to pay under the Collective Bargaining Agreement.

So that's just a general comment.

MR. ALM: If I may, Mr. Chairman?

MR. HEMPLING: One second, please.

COMMISSIONER KONDO: Can I respond to that?

MR. HEMPLING: I really mean these couple of questions to be short, because you're not here as a witness, and I'm sure you don't want to be put under oath saying have the Commission's order cite what you said right here; so, I'm not sure --

MR. MCCORMICK: This is more in the nature of argument as to what.

MR. HEMPLING: Because I'm not sure what the value is or procedurally this conversation at the moment, but you're not saying that there's a shred of legal inhibition on the Commission's authority to use judgment about the reasonableness of the Company's bargaining behaviors when the Commission sets a revenue requirement, are you?

MR. MCCORMICK: No.

MR. HEMPLING: Okay. That's --

MR. MCCORMICK: But what I -- hold on.

MR. HEMPLING: Just a second. That's the first thing I'm want to be clear on.

The second thing I want to be clear or ask you to be clear on is you're not suggesting that a Commission disallowance of costs associated with the Collective Bargaining Agreement is tantamount to interfering in the bargaining process, are you?

MR. MCCORMICK: What I am saying is that the bargaining process established under federal law is almost sacrosanct that the Commission certainly has the ability to influence that but not by directing or trying to compel anything into that Collective Bargaining Agreement.

MR. HEMPLING: That's not what my question --

MR. MCCORMICK: Right.

MR. HEMPLING: -- was. Well --

MR. MCCORMICK: And, therefore, as I said in my earlier statement, I think that any agency seeking to inference that has to find other areas under their regulation to put that pressure on either the Company or both parties to resolve that at a future time.

MR. HEMPLING: I'm trying to figure out whether I'm going to recommend the Commission that we just ignore what you're saying or try to find some clarification. That would be useful; so, hear me out for a second.

There's no legal bar, is there, no legal bar to the Commission issuing some policy statement, I'm not saying I would ever recommend this or they would ever do it, but issuing some nonbinding policy statement that said to the effect of we think wages in Hawaii are pretty decent relative to whatever we're going to compare it to and we think 2 to 4 percent increases over the next years makes sense; and, if that's what the Company ends up agreeing to, fine. If they end up agreeing it's something more, that's also fine; but, we're going to be looking at it very closely.

Can you imagine a single, legal reason why the Commission couldn't say something like that?

MR. MCCORMICK: No, sir, not if they're --

MR. HEMPLING: All right.

MR. MCCORMICK: -- kept in such general terms.

MR. HEMPLING: You know, that's, I think, all the Chairman was getting at, and I'm not sure he expected even to do that; but, we're just trying to make sure that this type of costs is -- do you agree that this type of costs is no different from any other type of costs in a revenue requirement in the sense that the Commission has a legal obligation to ensure its reasonableness?

Do you disagree with that statement?

MR. MCCORMICK: I'm not sure.

MR. HEMPLING: Okay. Sorry, to interrupt you, sir.

MR. MCCORMICK: No.

COMMISSIONER KONDO: Can I follow up with Mr. McCormick?

You agree there's a difference between recovery through rates versus recovery to a Collective Bargaining Agreement; in other words, if we set rates, it doesn't mean that we're telling the Company that they have to terminate or otherwise amend the Collective Bargaining Agreement, you would agree with that. Right?

MR. MCCORMICK: Exactly, I agree.

COMMISSIONER KONDO: Thank you.

And I don't think the Commission is here telling the Company to terminate the Collective Bargaining Agreement. I think the discussion we're having is to whether or not the amount that they'd like to recover to rates is reasonable, putting the Collecting Bargaining Agreement aside, and you seeing nothing wrong with that?

MR. MCCORMICK: Nothing wrong with that --

COMMISSIONER KONDO: All right.

MR. MCCORMICK: -- no.

COMMISSIONER KONDO: Thank you.

Sorry, Mr. Alm.

MR. ALM: I wanted to add a couple of points.

First, looking retroactively at the contract we have in place, which was negotiated in 2007, at a time when the economy was doing fine and the projections where it was going to go up, we had already had a contract turned down, a strike vote taken, and new leadership.

The longstanding head of the Union had retired; so, the group that negotiated the first contract with us was brand-new leadership. The Union turned down that contract and then they brought in their international representative to negotiate beyond the strike vote.

I think, at the time, and, you know, I'm not Mike May or Tom Joaquin, the thought was probably a three-year contract was a good idea and generally longer contracts are thought to be better, that they -- that we -- the strike was not the right answer for our economy or the community at that time; and, that overall the numbers were not out of line.

The contract was part of --

COMMISSIONER KONDO: Were you involved -- I'm sorry, just so I get some --

MR. ALM: No, directly, no.

COMMISSIONER KONDO: All right. Is what you're talking about, is from your discussions with either Mr. Joaquin or Mr. May --

MR. ALM: Those were --

COMMISSIONER KONDO: -- or --

MR. ALM: -- comments they shared.

COMMISSIONER KONDO: Okay.

MR. HEMPLING: If I understand you right, Mr. Alm, you're making the traditional prudence principle is that a Commission should look at the prudence as of the time of the event rather than access it in terms of subsequent events.

That's part of your argument; is that correct?

MR. ALM: Part of our argument. So in terms of whether we should be able to recover a reasonably incurred costs in the case of a Collective Bargaining Agreement measured at the time that it was negotiated, then I would hope that you would agree that we should recover those kinds of costs.

If the question is, What would be the impact of the Commission in some form, including words in the decision, or guidance given to us in some other way, indicating that while the Commission is not denying recovery of this, that given in light of economic circumstances, remember, this contract runs up next year; so, we're virtually in negotiations right now, that the Commission would expect to see the economy play into the amounts agreed to in any future negotiations or in any other agreements on the increases for nonunion employees, not only is that a fair thing to do but it could be useful.

You know when Mr. McInerny said that, you know, you asked him why we haven't gone back, after the international left and they had new Union leadership, the new Union leadership is taking sort of the old-pound-on-the-table format, and it's talking to its members about asking for 10 to 15 percent wage increases in the next contract.

Now, from our point of view, given everything that's going on, that's wholly unreasonable; but the posture of the new Union leadership is to essentially go to score a stern, at least initially, so they've made it very clear.

And during the six months that I was the interim operating officer of the Company, I was getting multiple letters a week from the Union on various subjects, and that's continued on this year.

So the new Union posture is going to be very interesting for Mr. McInerny and others to go through, and some sort of the indication that these are different times and people should react differently is clearly part of this.

The other thing is in response to PUC IR 171, which is the question on audits, we specifically noted in the last page of that, that we have commissioned the total comp study, because this notion that we're 11 percent behind California, or whatever, we want to test out assumptions in total comp, which includes not only the wages but the full set of benefits that are given; and, we don't have the results of that yet, but our intent is to use those both in negotiation but also as part of the 2011 cases we bring it in that we should be reasonable in light of the circumstances of obtaining and retaining employees both in merit and non-merit categories.

So I think forward-looking indications of the Commission's concern in this area are both fair and appropriate and probably very useful to us. And I just, you know, want to try to make that distinction between relooking at the 2007 negotiations, which is very difficult at this point; but, also, the fact that the Commission expressing its views, I would hope you wouldn't exactly tie our hands with a specific number but expressing some sense of the Commission's feeling about this issue, you know, we would accept and actually probably welcome.

CHAIRMAN CALIBOSO: And that's similar to -- Mr. Alm, I'm sorry, that's similar to your testimony that we're going to cover for the employee rate discount, correct, where I think you're suggesting -- I'm not sure you're suggesting, but if we do it, one alternative is to do it after the Collective Bargaining --

MR. ALM: That's one alternative to do it that way.

CHAIRMAN CALIBOSO: -- Agreement when it expires. Right?

Commissioner Kondo was going to ask Mr. McInerny.

COMMISSIONER KONDO: Real quick, Mr. McInerny. I appreciate the challenge you go through and I heard you make a comment which I thought was a good comment about how you think you want to try to make it fair.

So my question is, The CBA that's currently in place, is it fair, from your perspective?

Is it a fair contract?

MR. MCINERNY: It's fair from the perspective that you make an agreement and you honor the agreement.

COMMISSIONER KONDO: No, that's not what I'm asking.

I'm asking, is it fair?

Are the numbers in there fair?

MR. MCINERNY: You know it's hard to say fair. Towards what? I mean, to what end is fair?

COMMISSIONER KONDO: How do you judge when you decide something is fair?

I mean, what are you looking at, and using that same criteria, how do you look at this contract?

MR. MCINERNY: I look at the contract, and there's a guy that's done it for 25, 30 years; and, when you make an agreement, you keep your word. And under the context of whether or not this number in this economy looks good, it doesn't look good; but, if you give your word based on the set of circumstances, then you have to keep your word. In that respect, I feel it's fair.

COMMISSIONER KONDO: How about at the time the contract was entered into --

MR. MCINERNY: Right.

COMMISSIONER KONDO: -- do you think it was a fair contract in 2007 -- or, I believe it was entered in 2007 -- is that correct?

Is that correct it was --

MR. MCINERNY: Yes, it was 2007.

COMMISSIONER KONDO: At that time, did you think the contract was fair?

MR. MCINERNY: You know, there's degrees of it. I'm going to be as clean on this as possible, I didn't like it; but, I didn't make the decision ultimately, no.

COMMISSIONER KONDO: You didn't like it why?

MR. MCINERNY: Well, I would have liked to settle for what we projected 3.5, 3.5, 3.5. My thoughts, when I do things, have to do a lot with the full spectrum of strategy for the future, et cetera. And the way this thing took off, I wasn't happy; but, you know, you can't -- I couldn't say that it's not fair at that point, because whether you're happy with the bottomline and what took place, you know, it did avert a strike.

Would it be fair if I said I was willing to take a strike?

Would it be fair if there were those kinds of thoughts?

So, you know, it was fair under certain circumstances, and that's the best that I can state at this point.

COMMISSIONER KONDO: All right. Thank you.

CHAIRMAN CALIBOSO: Mr. Hempling?

We're right on time for our morning break.

We will take our recess and reconvene 10:45.

We're in recess.

(Whereupon, at 10:30 a.m., a recess was taken, and the proceedings resumed at 10:47 a.m., this same day.)

CHAIRMAN CALIBOSO: Good morning.

This hearing is reconvened.

Mr. Hempling, please continue.

MR. HEMPLING: Thank you, Mr. Chairman.

We're still in this area of Panel 4 concerning employee costs.

Can we turn the subject of the employee electricity discount?

Is that Mr. Alm's area?

MR. ALM: Yes.

MR. HEMPLING: I've got the Schedule E in front of me. I'm a fellow from Maryland, so I just wanted to get clarification of some of the terminology in the schedule first.

Do you have another copy available?

MR. ALM: No, but I will. Okay, here's a copy, yes.

MR. HEMPLING: This goes back to 1972?

MR. ALM: Yes, the original does.

MR. HEMPLING: Sorry?

MR. ALM: Yes, this stuff goes back even farther than that but this was --

MR. HEMPLING: This particular schedule is effective as of August 21st, 1972?

MR. ALM: Right.

MR. HEMPLING: And in the availability paragraph it says, quote, This schedule -- it says among other things -- quote, This schedule is applicable to the above customers' residential electric service in a single-family dwelling unit metered and billed separately by the Company. Correct?

MR. ALM: Yes.

MR. HEMPLING: So it's available to tenants as long as their single-family is in a separately metered tenant's unit; is that correct?

MR. ALM: I believe if it's metered separately, we can do it, yes.

MR. HEMPLING: Right.

MR. ALM: If it's metered separately, yes.

MR. HEMPLING: Once again, if it's a tenant and they're in an apartment that's metered separately, that constitutes a single-family dwelling unit for purposes of this paragraph?

MR. ALM: Yes, as long as it's a dwelling unit which also has a specific legal term. If it has a kitchen, then, yes.

MR. HEMPLING: Okay, thank you.

Now on the rate, I think, I noticed sort of a difference in expressing this between this paragraph and the Collective Bargaining Agreement; but, I'm assuming this paragraph is the one that operates, when it says that this schedule, quote, Shall be two-thirds of the current effective schedule or rates for usage up to 825 kWh per month, close quote.

Do you see that?

MR. ALM: Yes.

MR. HEMPLING: The one-third discount applies to the kWh portion of the bill that the customer receives; is that correct?

MR. KIKUTA: Mr. Hempling, we actually have future panelists from the pricing division who will probably be able to help you with the questions on the tariff, Schedule D.

MR. HEMPLING: Okay. I just figured someone at Mr. Alm's senior level would know what the employee discount is but --

MR. ALM: I know what the employee discount is, but if you want the details, Peter Young is a better --

MR. HEMPLING: Is he here? Oh.

MR. YOUNG: Yes.

MR. ALM: -- person that would be better to answer that question.

MR. KIKUTA: Peter Young will be a panelist on --

MR. HEMPLING: Do you mind getting him on now so we can do this all at once?

MR. KIKUTA: Sure.

MR. HEMPLING: Mr. Alm, can you stay up there, though?

MR. ALM: Sure, okay.

MR. KIKUTA: And Peter Young will have to be sworn in --

MR. HEMPLING: Okay.

MR. KIKUTA: -- for the panel.

MR. HEMPLING: Thank you.

Welcome, Mr. Young.

CHAIRMAN CALIBOSO: Mr. Young?

MR. YOUNG: Good morning.

CHAIRMAN CALIBOSO: Please stand.

Do you solemnly swear that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth?

MR. YOUNG: Yes.

CHAIRMAN CALIBOSO: Thank you.

MR. HEMPLING: Good morning, Mr. Young.

MR. YOUNG: Good morning.

MR. HEMPLING: Are you familiar with Schedule E?

MR. YOUNG: Yes, I am.

MR. HEMPLING: Can you get a copy in front of you? Hang on to yours, Mr. Alm.

MR. ALM: Sure.

MR. YOUNG: I have it before me.

MR. HEMPLING: Okay. I wanted to understand to what portion of the customer's bill does this two-thirds figure in the rate paragraph apply to; specifically, does it apply strictly to the kWh charge on the bill?

Do you know?

MR. YOUNG: The two-thirds discount buys to KWH-related charges. It also applies to the customer charge.

MR. HEMPLING: So the whole bill is cut by one-third, is that how it works?

MR. YOUNG: It is with the cap at 825 kWh; so, the bill up to 825 kWh is cut by a third, and the full price is paid for any kWh or additions to the bill above 825 kWh.

MR. HEMPLING: Okay. I think we're writing the tariff, as we speak.

Are you saying that the fixed charge part of the bill is cut by one-third and then the kWh part of the bill is cut by one-third provided that the usage does not exceed 825 kWh?

Is that a correct restatement of what you're saying?

MR. YOUNG: Yes, that is.

MR. HEMPLING: Okay. Between you and me the words don't say that; but, I think, we both understand each other. You see the words say it's the two-thirds of the current effective rate.

Well, is rate defined as including the fixed charge?

MR. YOUNG: The customer charge --

MR. HEMPLING: Okay.

MR. YOUNG: -- is part of the Schedule R rate, yes.

MR. HEMPLING: Oh, sorry.

And what else is on the bill besides the customer charge and the kWh?

Does anything else show up on the customer's bill?

MR. YOUNG: The Schedule R charges include a customer charge, and two components of energy charges, so base fuel energy charge and a nonfuel energy charge; and, those are the components of the Schedule R charges.

MR. HEMPLING: All right.

MR. YOUNG: Other --

MR. HEMPLING: I'm sorry, go ahead.

MR. YOUNG: Go ahead, thank you.

The charges that are the bill are either related and charged on a per kWh basis. They include our energy costs adjustment and monthly fuel oil adjustment. Periodically, there are other charges. I believe there is a public benefits funds surcharge on a per kWh basis, a demand side management surcharge for residential customers right now.

In addition, there are also charges that are applied to the sum of customer based fuel energy and nonfuel energy on a percentage basis. The current interim rate increases that are in place are applied on that basis.

MR. HEMPLING: Okay. So the customer charge is cut by one-third regardless of the number of KWHs consumed and then everything else on the bill is cut by one-third up to the 825 kWh figure?

MR. YOUNG: That's correct.

MR. HEMPLING: Okay. Under special terms and conditions, Item 3, it states, quote, Availability of this schedule terminates six months after the death of eligible employee, retiree, or member of the board of directors, close quote.

Do you see that?

MR. YOUNG: Yes.

MR. HEMPLING: What's the reasoning for giving somebody a discount after they have deceased?

MR. YOUNG: Unfortunately, I can't tell you why we have this provision, and it does predate my employment with the Company.

MR. HEMPLING: It may become relevant to you at some point.

(Laughter.)

MR. YOUNG: Well it's leads to my errors, perhaps.

(Laughter.)

MR. HEMPLING: Okay. Mr. Alm, let's understand the relationship between this schedule and the CBA. I guess that question -- is that a question that would go to you, sir?

MR. ALM: Yes, yes.

MR. HEMPLING: The schedule is available for retirees of the Company. Correct?

MR. ALM: Yes?

MR. HEMPLING: If the Commission were to require the termination of this schedule effective with the expiration of the existing CBA, there would be no legal inconvenience to the Company associated with the CBA employees. Correct?

MR. ALM: Yes.

MR. HEMPLING: Is your answer the same with respect to the retirees who were formerly Union members?

MR. ALM: Our view of the issue with the retirees is that in our notice to them of this particular continuation of benefits it says that you're entitled to receive a discount pursuant to Schedule E unless notified otherwise, which, in our view, reflects the fact that Schedule E could be changed.

MR. HEMPLING: You can understand the argument that giving everybody in the Company a discount of this magnitude is inconsistent with the Company's very public effort to reduce the island's dependency on carbon-based electricity production. Correct?

MR. ALM: Correct; and, that was the reason for the cap. The issue had come up before that a discount would encourage people to use more energy and that that was not a good policy decision. That's why the 825 cap was put into place was so that the discount didn't incur its profit use of energy.

MR. HEMPLING: The discount did not encourage what?

MR. ALM: Profit use of energy, too much use of energy.

MR. HEMPLING: I know what the word is. I just didn't hear what you said.

MR. ALM: Okay.

MR. HEMPLING: What's the average kWh use for employees of the Company?

Do you know offhand or do you have a rough figure?

MR. ALM: I don't know that we have recently surveyed employees as to their average use.

Do we? Peter -- Mr. Young says we --

MR. HEMPLING: Mr. Young?

MR. YOUNG: This would be the average employee and retiree consumption bill in 2008 and that's 813 kilowatt hours per bill.

MR. HEMPLING: That includes board of director members?

They're not technically employees.

MR. YOUNG: That does -- my understanding is that --

MR. ALM: They gave it up. The board of directors voluntarily gave up this probably a couple of years ago.

MR. YOUNG: Okay.

MR. HEMPLING: Do you think, Mr. Alm, has no effect on the consumption of electricity by the employees?

MR. ALM: I think that the -- I think the discount for most employees serves as a relative cap that most of them want to take advantage of the discount so try not to exceed that number; but, if we average in the low 800s, then some are probably exceeding it and some not.

I mean, the use of electricity in Oahu depends heavily on where you live and the circumstances of your family; and, I mean, there are a variety of reasons why use is different for different people.

MR. HEMPLING: Maybe I didn't ask the question straight enough.

MR. ALM: Sure.

MR. HEMPLING: Do you think that having this discount results in more usage by your employees than if they didn't have the discount?

MR. ALM: No.

MR. HEMPLING: No meaning you don't think it effects their usage at all?

MR. ALM: I think our employees are well aware of the overall desire to cut use. In this community they probably hear it and work with it more than probably any other citizens in the community because it's part of our job. I think our employees are conscious of attempting to cut use, and I don't think our using the discount to use electricity excessively.

MR. HEMPLING: So the answer is you don't think people consume any more with the discount than if they didn't have a discount?

MR. ALM: Correct.

MR. HEMPLING: Are you familiar with the time-of-use rates that are proposed in this case by the Company?

MR. ALM: I'm familiar with the time of -- they were proposing time-of-use rates, looking for specifics on that again, Mr. Young, is our rate --

MR. HEMPLING: Mr. Peter young?

MR. YOUNG: Yes.

MR. HEMPLING: What's the proposed tiers in the time-of-use rates?

There's a cents, a one to two cents per kWh differential between several of the tiers, is that correct, Mr. Young?

MR. YOUNG: You're referring to our proposal for our residential time-of-use rate option?

MR. HEMPLING: Correct.

MR. YOUNG: That is correct, our -- we proposed a one-cent differential for usage between 350 and 1,200 kWh per month and the two-cent adder for usage above 1,200 kWh per month. These prices or these adders align with the differential proposed for the regular Schedule R inclined to operate in this case.

MR. HEMPLING: So the premise of the Company is that one- or two-cent difference in prices will cause a change in behavior. Correct?

MR. YOUNG: The rates were designed on an inclining basis in part to manage the bill impact of the revenue requirement requests on different usage groups so that the design proposes a smaller bill impact on those customer -- residential customers who have the smallest usage and then of higher bill impact on customers who have usages that fall in the higher tiers.

MR. HEMPLING: The proposed time-of-use rates, I thought their purpose was to encourage change and behaviors; specifically, shifting load from one period to another, is that not one of the purposes?

MR. YOUNG: The proposed time-of-use rates are options, and they give customers the opportunity to reduce their bills from what they would be under regular Schedule R if they're able to change their usage panels.

MR. HEMPLING: Right. But the premise for the one- to two-cent difference, is it that that one- to two-cent difference would be an inducement to changing their consumption pattern. Correct?

MR. YOUNG: The one- to two-cent difference is related to usage levels not time-of-use levels, even though it's on the time-of-use rate schedule. It's intended to align the pricing on the time-of-use rate option with the regular Schedule R rate proposal.

MR. HEMPLING: I'm sorry, if I'm not being clear.

The time-of-use rate proposal really has two components. Right?

One is a rate differential between times of the day and another is a block differential relating to total KWHs of consumption during the month; is that correct?

MR. YOUNG: That is correct.

MR. HEMPLING: All right. Maybe -- so that both of those features exist in the time-of-use residential rates. Correct?

MR. YOUNG: Yes.

MR. HEMPLING: Okay. Focusing on the differential that the Company is proposing with respect to times of the day, focusing on that, there's a difference in pricing to the customers depending on the time of day that they consume. Correct?

MR. YOUNG: That's correct.

MR. HEMPLING: And how big is that difference?

MR. YOUNG: When compared to the regular Schedule R, if you take -- let me take you to the proposed Schedule R.

On the proposed Schedule R, we have about two-thirds of the way down the page, the pay scale energy charge that applies to all kWh; and, in the top half of the page we have a nonfuel energy charge that varies with the energy usage.

MR. HEMPLING: You're talking about the R rate not TOU-R --

MR. YOUNG: Right --

MR. HEMPLING: -- rate. Correct?

MR. YOUNG: -- it's the R rate. And I'm going to take you here from the R rate back to the TOU rate.

MR. HEMPLING: All right.

MR. YOUNG: Okay. So if you take the sum of the first tiers nonfuel energy charge, in this case, in direct testimony, it's the 10.04807 cents per kilowatt hour and add that to the base fuel energy charge, that's 26 cents and change.

MR. HEMPLING: Yep.

MR. YOUNG: Okay. Then we go back to the schedule TOU-R proposal for energy charges in time-of-use periods.

MR. HEMPLING: Yep.

MR. YOUNG: The on-peak period rate proposed here is 17 cents higher than that sum; and, the off-peak period rate proposed here is 4 cents lower than that sum.

MR. HEMPLING: Yeah. So what is the differential between the on-peak and the off-peak for the TOU-R customer?

MR. YOUNG: That differential is 21 cents. The difference between the on-peak rate here and the off-peak rate on Schedule TOU-R?

MR. HEMPLING: That's my question. That's my question. It's 21 cents?

MR. YOUNG: Yes.

MR. HEMPLING: And you just have two tiers, two time-of-use periods now with your proposed TOU-R rate?

MR. YOUNG: That's correct.

MR. HEMPLING: You're proposing to move from three to two?

MR. YOUNG: Yes.

MR. HEMPLING: The differential is 21 cents?

MR. YOUNG: Yes.

MR. HEMPLING: And you expect -- and the premise behind that differential is to cause a change in customer behavior. Correct?

MR. YOUNG: The difference in price alone does not accomplish a change by itself, but what also goes along with it is there's a change in the proposed hours where these time-of-use rates are applicable.

MR. HEMPLING: Yeah, but the whole reason for half -- sorry, go ahead.

MR. YOUNG: And so the period where the on-peak of rates apply is shortened, and it's only five hours a day from 3 p.m. to 8 p.m.; and, the other 19 hours a day are where the off-peak rates apply; so, there are more opportunities in hours where off-peak rates of lower rates apply.

MR. HEMPLING: It's the price differential that would attract people to the notion of changing the time of day that they consume electricity, right, that's why you have tiers for the prices?

MR. YOUNG: It would be -- I would agree that the price differential is important to customers as well as the usability of that rate and when they can access or take advantage of that price differential --

MR. HEMPLING: I understand.

MR. YOUNG: -- and how effectively they can do that.

MR. HEMPLING: Thank you.

In other words, the behavioral change is a function about the price differential and the opportunity to use it, the latter factor relating to the period of time when their lower rate is available?

MR. YOUNG: Yes.

MR. HEMPLING: It's got to be when people are awake otherwise they're not going to be washing their clothes in the middle of the night. Right?

MR. YOUNG: We believe --

MR. HEMPLING: Okay.

MR. YOUNG: -- that's true.

MR. HEMPLING: Now what is the -- what is roughly the cents per kWh savings for somebody that has the E rate?

Taking an average customer, what did you say?

What did Mr. Alm say the atypical employee was using, just under 825, I believe?

MR. YOUNG: It was 813.

MR. HEMPLING: Okay. So can you tell me what the per kWh benefit is?

What's effectively their discount taking a customer with that average use?

MR. YOUNG: The discount of practically speaking from month to month in the real world the operation of the discount varies depending on the -- of basically the monthly fuel oil adjustment level, because that -- a third of that effectively becomes included in the customer's --

MR. HEMPLING: Yeah.

MR. YOUNG: -- bill discount.

MR. HEMPLING: So just give us a fill for something typical.

MR. YOUNG: Okay. When we looked at this, this summer, let's say, in early July, about approximately the time of the interim decision in order, a customer who used 825-kilowatt hours, was getting a discount of approximately $55 a month.

MR. HEMPLING: Can you give it to me on a per kWh basis?

MR. YOUNG: Let me do that --

MR. HEMPLING: Okay, great.

MR. YOUNG: -- right now. That's about 6.67 per kilowatt hour.

MR. HEMPLING: Are you comfortable with Mr. Alm's statement that 6-cents per KW -- well, he didn't it put this way, but I'll ask it to you this way, Do you feel like a 6-cents per kWh discount rates is going to cause no customer change in behavior?

There's no way somebody getting a 6-cent discount in their per kWh rate would be consuming more than they otherwise would without the discount?

MR. YOUNG: I guess, I don't know, and it would really depend on the customer's individual circumstances; and, quite frankly, customer's awareness of their -- what they're paying per kWh.

MR. HEMPLING: Okay. It would be unfair to say that employees with bigger homes get a bigger benefit than employees with smaller homes because of the operation of the 825 kWh cap, Mr. Young?

It would be unfair to describe this discount having that effect, do you think?

MR. YOUNG: It would be difficult to say because electricity consumption is a function certainly of the home size but as well as the appliances that are in use at the home, whether they're configured with air conditioning or not, how many refrigerators, whether there's electric resistence water heating, gas water heating, and solar water heating; so I don't think we're -- certainly, I'm not able to generalize.

MR. HEMPLING: Okay. Can you help me with one last question, Mr. Young.

I have PUC IR 157 and it relates to the costs of the discount in terms of revenue requirement.

Is that your area or would that be somebody else's area, the revenue requirement effect of the discount?

MR. KIKUTA: That would be Ms. Furuta-Okayama's area.

CHAIRMAN CALIBOSO: Mr. Hempling, can I ask a quick question of Mr. Young?

MR. YOUNG: Yes, Mr. Kondo.

CHAIRMAN CALIBOSO: Caliboso.

MR. YOUNG: I'm sorry, Mr. Chairman.

(Laughter.)

CHAIRMAN CALIBOSO: It sounds the same.

(Laughter.)

CHAIRMAN CALIBOSO: The average use per employee on the discount is how much again per month --

MR. YOUNG: Can --

CHAIRMAN CALIBOSO: -- in kilowatt hours.

MR. YOUNG: The billing months of 2008 it was 813.

CHAIRMAN CALIBOSO: 813?

MR. YOUNG: 813 --

CHAIRMAN CALIBOSO: And how many --

MR. YOUNG: -- kilowatt hours per month.

CHAIRMAN CALIBOSO: Thank you.

And how many customers or employees does that represent?

MR. ALM: Can I help you? I have it.

MR. YOUNG: It's approximately 2,100 employees and retirees.

CHAIRMAN CALIBOSO: Okay, thank you.

And what is the average residential usage for customers in total?

MR. YOUNG: That is, in 2008, per billing month, 654 kilowatt hours per billing month.

CHAIRMAN CALIBOSO: And how many customers does that represent?

MR. YOUNG: I don't have that here. That's -- it is in our work papers. It's approximately 260,000, give or take a few thousand.

CHAIRMAN CALIBOSO: Thank you.

Thank you, Mr. Hempling.

MR. HEMPLING: I'm sorry, to go back over something.

This 654 kWh represented what, sir?

MR. YOUNG: I'm sorry, that's the average residential customer bill usage in 2008.

MR. HEMPLING: I have in my notes from the prior conversation of Mr. Alm and 813 kWh figure, and that was the average for the Company's employees?

MR. YOUNG: Employees and retirees who are getting the Schedule E rate.

MR. HEMPLING: How come there's such a difference?

I mean, that looks like about a 15, 20 percent difference in per customer usage between the residential population, as a whole, and the employee and retiree population.

Do you have any reason -- do you have any explanation for that difference, income level, or house size or something?

MR. YOUNG: Myself, I'm --

MR. ALM: Ms. Furuta-Okayama will speak to here.

MS. FURUTA-OKAYAMA: I think the answer to that question would require some further analysis. Yeah, there's -- as Mr. Young mentioned earlier, if there's difference -- different demographics would drive differences in usages from one customer to another. They're between two employees, the employee and the regular residential user.

MR. HEMPLING: Okay, thank you.

MR. ALM: But, if I may add to that. The 825 was determined that the last time this was reviewed, as an average of the then-current Hawaiian Electric employees as a subset of a larger -- rather than looking at the overall use within all Hawaiian Electric customers, the decision, at the time, was to use the subset of then-existing Hawaiian employees and then take an average use out of that. That's the basis for it.

So it was based on not -- it was not a comparison for the overall group of ratepayers. It was through the

Hawaiian Electric employees, which is one reason why you got a distinction subset rather than using an average across the entire rate.

MR. HEMPLING: Okay. Ms. Furuta-Okayama, this question I have now about PUC IR 157, this is your area?

MS. FURUTA-OKAYAMA: Yes, it is.

MR. HEMPLING: Okay. It says here that the, quote, on aggregate, HECO would be required to spend estimated $1,163,641 to replace the economic value electric discount to active employees, close quote.

Do you see that?

MS. FURUTA-OKAYAMA: Yes, I do.

MR. HEMPLING: And then it says This -- referring to 1.16 million -- exceeds the cost of the estimated test year electric discount by $478,691.

Do you see that?

MS. FURUTA-OKAYAMA: Yes, I do.

MR. HEMPLING: Okay. I just want to make sure we understand this.

So when you say that -- when you refer to the cost of the discount, the cost of the discount is that difference between the 1.16 million and the 478,000 (sic). Correct?

MS. FURUTA-OKAYAMA: The cost of the -- sorry. The cost of -- we took the total active employees to scale as a cost. So it was the estimate of the test year employee electric discount multiplied by the percentage of the active employee participants, and that number was 684,940.

MR. HEMPLING: And that's the difference between the two numbers that are here in 157?

I'm just trying to get the arithmetic in my head, I hope.

MR. ALM: If I may.

MR. HEMPLING: Is that what the number represents?

MR. ALM: The 648 is what the actual discount is, because it's a tax event and it's probably being taken out on a pretax basis, if you assume, for a moment, that we should provide an equal amount in compensation where we would take that away, you would go to the back of that IR page and see the calculation.

MR. HEMPLING: Okay.

MR. ALM: That if you took the tax effect of that, it would take a million-plus to equalize what the employee discount does because it's taken away pretax.

MR. HEMPLING: I got that.

The six -- when you talk about the costs of the discount, you're talking about the revenue foregone under the existing Schedule R rate; is that correct?

Is that what you mean by the costs of the discount, ma'am.

MS. FURUTA-OKAYAMA: Yes, I do.

MR. HEMPLING: Okay. So what is the net -- so if the Commission were to require elimination of Schedule E upon the expiration of the CBA, and if the Company were so moved to come in for a rate increase for that one item, what would be the amount of additional revenue requirement they would be seeking?

MS. FURUTA-OKAYAMA: I don't know the additional revenue requirement amount, but if we were to -- if they replaced the benefit where they comp -- with something comparable from an economic value from a payer benefit standpoint.

MR. HEMPLING: Yes, that's what I meant, I'm sorry.

MS. FURUTA-OKAYAMA: Okay. Then it would be $1.16 million.

MR. HEMPLING: That whole amount?

MS. FURUTA-OKAYAMA: Yes.

MR. HEMPLING: Okay. All right. Excuse me, on second.

COMMISSIONER KONDO: Could I ask some questions while he's looking at his notes?

Now looking at that Attachment 1 to PUC IR 157, it says percentage of active employee participants 64.2.

Do you see that?

MS. FURUTA-OKAYAMA: Yes, I do.

COMMISSIONER KONDO: Why is it not -- is the

36 percent, or whatever the other remaining percentage of employees who are not participating, why is that?

MS. FURUTA-OKAYAMA: That would represent the retiree usage -- excuse me, the number of retiree participants.

COMMISSIONER KONDO: Okay. I'm sorry, maybe I'm not understanding, but maybe it's the caption or the language before that, the explanation that says, Percentage of active employee participants, 64.2 percent. I'm looking at -- I guess it's the second number line on that attachment.

And you're saying that it's the other 35.8 percent are retirees even though it's titled percentage of active employees?

MS. FURUTA-OKAYAMA: Yes.

MR. HEMPLING: Wait a minute. I'm sorry, I don't understand that. May I --

COMMISSIONER KONDO: Sure.

MR. HEMPLING: Are a 100 percent of active employees using the discount?

MS. FURUTA-OKAYAMA: No, they are not.

MR. HEMPLING: What percentage of active employees are using the discount?

According to this chart, it says 64.2.

Do we misunderstand the line item?

MS. FURUTA-OKAYAMA: No. The intent of this calculation is to show what of the estimated of test year employee electric discount dollar amount, what amount of that is attributed to usage by active employees versus usage by retirees.

MR. HEMPLING: Okay. Then I'm confused.

The first question that Commission Kondo was asking is, Why isn't every employee taking advantage of this discount?

That's a good question, isn't it?

MS. FURUTA-OKAYAMA: Yes, I --

MR. HEMPLING: And I understand where the board of directors are. They don't wanted a headline.

But what about the other employees?

Do you know?

MS. FURUTA-OKAYAMA: Yes, I'm sorry. I misunderstood the original question.

As Mr. Alm stated earlier, there are certain situations under which the Schedule E applies. So, for example, if an employee -- if more than one employee lives in the same dwelling that's metered by the same meter, only one of them can take the discount.

MR. HEMPLING: Okay. So you got a lot of married employees?

MS. FURUTA-OKAYAMA: We do have a few.

MR. ALM: Renters.

MR. HEMPLING: Sorry?

MR. ALM: Renters.

MR. HEMPLING: Renters who are not in units that are separately metered?

MR. ALM: Right. Families living together and many of our younger employees still live with their family or --

MR. HEMPLING: All right. Thank you.

CHAIRMAN CALIBOSO: I just want to remind everybody, for the court reporter's sake --

MR. ALM: Sorry.

CHAIRMAN CALIBOSO: -- that we all try to speak one at a time.

MR. HEMPLING: I'll even call on you, Mr. Alm, if you wave your hand.

Back to you Ms. --

MS. FURUTA-OKAYAMA: Gail is fine.

MR. HEMPLING: -- Furuta-Okayama.

The discount is available to CBA employees as well as well -- excuse me.

The discount is available to merit employees as well as non-merit employees. Correct?

MS. FURUTA-OKAYAMA: That's correct.

MR. HEMPLING: The 1.163 -- excuse me.

The 1,163,641-dollar revenue requirement effects of keeping the employees economically whole upon the expiration -- upon the re-elimination of Schedule E is a number that applies -- takes into account both merit employees and Union employees. Correct?

MS. FURUTA-OKAYAMA: That's correct.

MR. HEMPLING: All right. So the Company is under no obligation to -- let me restate that.

Do you know what the percentage of -- do you know what this figure would look like if you confined your goal of maintaining economic value to the CBA employees only?

Would it be, roughly speaking, a half, two-thirds, one-third, any idea?

MS. FURUTA-OKAYAMA: No, I'm sorry, I don't have that information.

MR. HEMPLING: Well, just -- I don't want to ask you to guess on the record, but does the number of employees who are in the Union represents half of the Company's total employees or --

MS. FURUTA-OKAYAMA: Yes, I'd say it's about a 50/50 split --

MR. HEMPLING: Okay.

MS. FURUTA-OKAYAMA: -- determinant, but I can't attest how each of those populations use --

MR. HEMPLING: Of course.

MS. FURUTA-OKAYAMA: -- the discount.

MR. HEMPLING: And I assume, Mr. Alm, that in response to the Commission were the Commission to eliminate this schedule, you would feel it proper to find a comparable economic benefit, not only for the CBA employees, but for the merit employees; is that correct?

MR. ALM: Yes.

MR. HEMPLING: That would be part of maintaining the 10 percent to the goal of 10 percent difference between the salaries. Right?

MR. ALM: Correct.

MR. HEMPLING: Well, is the 500-or-so dollars that we're talking about in terms of the value of the discount per employee, how does that compare to the amount represented by a 10 percent differential?

Is that getting close?

MR. ALM: The 10 percent differential is going to be more than that, but it's not an insignificant number.

MR. HEMPLING: All right.

COMMISSIONER KONDO: Mr. Alm, could I follow up with some --

MR. ALM: Sure.

COMMISSIONER KONDO: -- of those questions?

MR. ALM: Sure.

COMMISSIONER KONDO: Is the Company still seeking to recover through rates of the employee discount or to continue the Schedule E in this rate case?

MR. ALM: It's been a long-standing part of our Company's compensation. It is clearly awkward during the existing contract and existing wage structure compensation structure we have to make a sudden shift like this, as opposed to doing it prospectively; so, the Company's preference would be to do this prospectively, yes, it would.

COMMISSIONER KONDO: So the Company is still seeking to continue Schedule E in this rate case?

As a result of this rate case, the Company's position is Schedule E should remain a viable action?

MR. ALM: Yes. If it -- if the Commission chooses not to continue Schedule E, our preference is that it do so across the board and that it simply do what it did in its interim decision is to eliminate the schedule.

COMMISSIONER KONDO: And how would that affect the Collective Bargaining Agreement?

MR. ALM: You can assume that there would be an effort to make up for anything felt to be lost by the lost of the discount.

COMMISSIONER KONDO: How has that Company done that with respect to the interim for the non-merit employees?

MR. ALM: We across the board remove the discount for everybody. The Union, I believe, is taking it to arbitration. Clearly, we've had unhappiness registered in our direction, but I -- you know, our employees are not unaware of what's going on outside the Company; and, I think that there is some feeling that fair is fair; and, if it's across the board, it's across the board.

The Union, as you're well aware, particularly exercised over this issue, but we do have the vehicle of arbitration for dealing with that. But, you know, if you ask me, Would we prefer to do it at the end of the CBA term and prospectively after that, that would be a preference; but, if you're go to do it, then we rather you just eliminate E and not put us in a position of creating classes of employees of retirees but have a single fair movement across the board.

COMMISSIONER KONDO: During your opening statement, you talked about the pain being universal and you mentioned specifically the employee discount being eliminated --

MR. ALM: Yes --

COMMISSIONER KONDO: -- as well as no wage increases for -- sorry, for merit employees.

Do you recall that?

MR. ALM: Yes.

COMMISSIONER KONDO: What did you mean by "sharing the pain," or the pain being universal when you talk about the employee discount, because my impression, from that statement, was that the Company was no longer seeking to include the employee discount or continue Schedule E as part of this rate case?

Could you explain what you meant when you included that in your opening?

MR. ALM: I believe what I meant is that, at this point, the issue of wage increases for 2009 is a moot point. That no matter what comes out, and we're basically through 2009, and employees have not received that.

And, you know, I think I also said at the end that Mr. Williams would be, in his closing, and, you know, during the course of these hearings, there are places that we're, you know, prepared to just say, you know, we don't need a recovery of certain items; and, one of those is the remaining 2 percent of wages that we did not give up in the Settlement Agreement.

On the employee discount, what we said to our employees is we would come to the Commission and say to you that this is a longstanding benefit. It goes back 50-plus years. That it's been there through good times and bad times and that has been built into the basic compensation arrangements of the Company going back over five decades; and, to at least make the case to you, that we should be allowed to continue that until we had the time to look at that in a larger context of people's compensation.

COMMISSIONER KONDO: Assuming that --

MR. ALM: But again --

COMMISSIONER KONDO: I'm sorry, I'm sorry.

MR. ALM: -- but, again, if the Commission decides that the day of the discount is done, whether it does so at the end of the CBA period, or it does so essentially effectively change the interim order, the Company's strong view is issued across the board, and that there shouldn't be any distinctions created between retirees, merit or non-merit employees; that all of our employees should for, better or worse, be in the same position.

COMMISSIONER KONDO: I guess my confusion is that when you talk about "sharing the pain" if the Commission were to continue allowing Schedule E to be in place, that pain that's been shared has been relatively short-lived.

In other words, once the order comes out, the discount will be back in effect. And so it seemed to me that -- or even if in the Company decides not to continue that, that there's revenue that -- well, scratch that.

It just seems to be that to be inconsistent with the statement. I hear what you're saying. I just --

MR. ALM: Well, Mr. Chairman, without, you know --

COMMISSIONER KONDO: Mr. Kondo.

MR. ALM: -- in our -- you know, we clearly signaled to you that we would be requesting an additional interim of dealing with CT-1. We also believe that file decisions here can take a little bit more time than that; so, it is really not our assumption, but even were you to rule, that we could continue that discount, that we might not hear for a considerable period of time on that issue.

So how long that pain lasts is pretty much in your hands. Even if you do decide to restore it, because it would depend on when you issued a final decision, assuming it wasn't the second interim of restoring it.

So I don't think we necessarily assume much about the pain; but, you know, I also think I said, and what I said in my opening, is, you know, we're not trying to compare our pain with yours, and we're not trying to suggest that anything we're doing is matching what the State employees are going through, the furloughs or salary cuts that I know some of you have taken.

I think you will see an effort by us over the next few days and in the final statement that Tom makes to try to show some significant reductions in total by the Company; but, you know, our pledge is to raise with you the rate issue of changing the employee discount at this moment, but we are prepared for the fact that the day of the employee discount may well be over, and our request is that however it's handled, that it's in as fair a manner as possible to our Company.

COMMISSIONER KONDO: Thank you.

Mr. Young, you know, you provided the Commission with a figure of the average use for employees that are participating or had participated in the Schedule E program, 813-kilowatt hours per month.

Do you have a median number?

What the median is?

MR. YOUNG: The median usage for a Schedule E customer?

COMMISSIONER KONDO: Yes.

MR. YOUNG: No, I don't have that here. We could certainly get that for you.

COMMISSIONER KONDO: I don't know who the right person is to ask this question, but my understanding is that the employee discount can be assigned, is that correct, to a different address or to an address?

Is that correct or is that incorrect?

Maybe the better way to ask the question is, Does the employee discount have to be based upon usage of a residence that is the employee's residence of record with the Company?

MS. FURUTA-OKAYAMA: Yes, that's correct. There's validation that's done against where the bills are made for the employee discount and where the employee that's claiming that bill is living or has as their residence of record in their employee record.

COMMISSIONER KONDO: Just so I understand it, you're saying that it has to be applied to the residence of record. Right?

MS. FURUTA-OKAYAMA: Yes.

COMMISSIONER KONDO: Okay.

MR. HEMPLING: The transfer business is that if an employee moves, as long as he or she remains an employee, the discount goes with the employee?

MS. FURUTA-OKAYAMA: Yes, that's correct.

COMMISSIONER KONDO: All right. Thank you, Ms. Furuta-Okayama.

I'm good. Thank you.

MR. HEMPLING: I'm sorry to -- I won't use the word "drag" this time, but you brought up the fact, Mr. Alm, that I don't think the Commission had knowledge of, and that's this arbitration issue.

As concisely as you can, can you explain what that's about?

MR. ALM: Our view of the way the Collective Bargaining Agreement reads is that it says we give the Union a discount pursuant to Schedule E. If the Schedule E no longer exists, then there's no discount to be given; and, that's how we read the contract.

The Union believes that even if Schedule E disappears, they somehow have a right to continue to receive that discount no matter what. That's not our view.

MR. HEMPLING: And is that disagreement that is now in arbitration personally to the CBA which provides for arbitration when there's a disagreement over interpretation of the CBA?

MR. ALM: It's either in arbitration or it will be going to arbitration.

Is it in yet?

Sorry, I should have -- it could be on its way. I don't know if it's actually --

MR. HEMPLING: You've just explained the status. Mr. Alm, has described a disagreement between the Company and the Union as to interpretation of the agreement.

Where does that stand?

MR. MCINERNY: It's been assigned to attorneys. They're in conference and they have yet to pick an arbitrator. It's pretty close to going.

MR. HEMPLING: In other words, I'm just understanding the official part of this. The Union has given some kind of official notice to the Company, is that correct, sir?

MR. MCINERNY: Yes, it's correct.

MR. HEMPLING: And that notice is?

MR. YOUNG: That they wish to arbitrate the case.

MR. HEMPLING: Okay. Thank you.

MR. MCINERNY: You're welcome.

MR. HEMPLING: Excuse me.

(Whereupon, Mr. Hempling briefly confers with the

Commission.)

CHAIRMAN CALIBOSO: All right. I think that's all for this panel; so, as we did in other panels, you have an opportunity to cross-examine each other, if you'd like.

Mr. Kikuta?

MR. KIKUTA: Hawaiian Electric has no questions.

MR. ITOMURA: Consumer Advocate has no questions.

CHAIRMAN CALIBOSO: Thank you.

MR. MCCORMICK: No questions from the DOD.

CHAIRMAN CALIBOSO: All right. Thank you.

We can go ahead and start the next panel on CT-1.

Do we need to do some musical chairs?

MR. KIKUTA: Actually, Mr. Chairman, it would be extense of musical chairs, because our witnesses are still at Hawaiian Electric --

CHAIRMAN CALIBOSO: Oh, okay.

MR. KIKUTA: -- offices right now.

CHAIRMAN CALIBOSO: And they're scheduled to appear this afternoon?

MR. KIKUTA: Correct.

CHAIRMAN CALIBOSO: So if we broke early for lunch, could they be back here in an hour-and-a-half?

MR. KIKUTA: Certainly.

CHAIRMAN CALIBOSO: Which should be 1:15?

MR. KIKUTA: Yes.

CHAIRMAN CALIBOSO: Okay. We'll recess early for lunch and reconvene at 1:15.

Thank you.

MR. KIKUTA: Thank you.

CHAIRMAN CALIBOSO: We are in recess.

(Whereupon, at 11:39 a.m., a recess was taken, and the proceedings resumed at 1:16 pm., this same day.)

A F T E R N O O N   P R O C E E D I N G S

CHAIRMAN CALIBOSO: Good afternoon.

Let's get started. We're starting off with the panel, Panel 4, I believe.

Do we have any new witnesses?

MR. WILLIAMS: Mr. Chairman, could I first make my appearance for this afternoon?

CHAIRMAN CALIBOSO: Oh, thank you.

MR. WILLIAMS: Thomas Williams appearing on behalf of Hawaiian Company.

And we do have a bunch of new panelists. If they would all stand, the ones that have not been sworn in.

CHAIRMAN CALIBOSO: Well, this is Panel 5, by the way, I'm sorry.

Would you like to name them, Mr. Williams?

MR. WILLIAMS: Yes. Let's see. We have Ross Sakuda over here, bob Isler, Lori Nagata. We have Brett Munger, Ken Murakami. That's the list of new names; and, perhaps, only start the panel where we can identify what it is that they do, so you understand why they're here.

CHAIRMAN CALIBOSO: Thank you.

Do you all solemnly swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth.

ALL WITNESSES: I do.

CHAIRMAN CALIBOSO: Thank you. You may be seated.
And there are no other new witnesses. Correct?
Thank you.
MR. ITOMURA: Oh, I'm sorry. Consumer Advocate does have Joe Herz. He's already been sworn; but, for Panel 5, he's our witness.
CHAIRMAN CALIBOSO: Thank you, Mr. Itomura.
Anything else before we get started?
MR. WILLIAMS: Mr. Simmons hasn't testified yet, but he has been sworn in on the first day; so, he will be a panelist.
CHAIRMAN CALIBOSO: Okay, thank you.
You may begin, Mr. Hempling.
MR. HEMPLING: Thank you, Mr. Chairman.
Good afternoon, ladies and gentlemen.
This panel focuses on CIP costs recovery, and there are, as I understand it, three distinct issues; and, I'm going to try to proceed in order, although sometimes they merge.
The first issue is, Is the plan used and useful? And on that one, I may have some questions with the lawyers since the facts in the law tend to come together; so, if the lawyers don't mind being on call during that conversation, that would be helpful.
Secondly, is what are the alternatives for the timing of recovery?

And the third is, What is the appropriate total cost level for recovery?

Those I think encompass all the issues that have been floating around.

So let's start with the used and useful issue. I'd like to just start with the lawyers for a second.

Can you speak to the distinction between the word "used" and the word "useful," and the reason that I ask that is there's evidence that the plants used because it's spitting out some electrons but the word "useful" means something different because it's the statute. In fact, the statute says, "Actually used and useful."

Does any of the lawyers have any comment on how the Commission can understand the distinction between those two terms?

Mr. Williams first.

MR. WILLIAMS: Thank you, Mr. Hempling.

I don't think there's a major distinction, but the actual words in the statute are used or -- "actually used or useful," not "used and useful" in Hawaii's particular statute; but, what it connotes is the fact that the asset is available and is useful in serving customers and providing electric service.

And there's -- attempted to provide some of the case law in this area and their response to IR 117, because we thought you would have some legal questions as well. Obviously, the fact witnesses did not provide that legal discussion. We did. And it is the plant is held to be used or useful when it was added for a demonstrated need. Even if the need has lessened at the time, it actually goes into service. It has been held to be used and useful, and they use that terminology in other jurisdictions.

Used and useful, when it is available on a standby basis, even if it's not actually providing service most of the time or much of the time; and, it's also -- can be put into rate base as plant held for future use if it's no longer earning a return through AFDUC, but it has been completed; and, so AFDUC has been properly stopped.

MR. HEMPLING: What prevents the Company from going seven or eight more plants, poking them all up saying they're available because we've now perfected liability to an extent that there will never been an outage, how does your definition of used or useful prevent the Company from justifying an unlimited number of plants; and, one of which, can still be used or possibly useful?

MR. WILLIAMS: Unfortunately, we don't have that type of hypothetical situation, because we have a rule that requires the Commission to review our commitment to the expenditures for a project; and, at the time the Commission does that review, which is under Paragraph 2.3(g)(2) of

General Order No. 7, the Commission makes the determination of whether it's necessary or useful for current or future purposes.

And, in this instance, there was actually a determination if there was an urgent need for the Company to add this particular generating unit.

So you have a -- what you don't have in many jurisdictions, a prior determination actually by the Commission, it is appropriate for the utility to add the facility.

MR. HEMPLING: Does that prior determination bind the Commission to a decision with respect to the used or usefulness of the plant in this particular test year?

Does that prior decision bind the Commission?

MR. WILLIAMS: The answer strictly is, no, you can look at the circumstances at the time; but, in looking at the circumstances at the time, you have to look at the reasonableness of the actions taken by the Company in meeting the demonstrated need, so where there was a demonstrated need; and, in fact, in this case, there's still a current need for this particular generation, and the generator is actually used to meet that need.

But you can look at those circumstances, but the case law in Hawaii and, in particular, in other jurisdictions, in general, is that when you look at that need, you don't look at it with 20/20 hindsight. You recognize that the utility has to take steps well in advance of the need date for a particular generator; and, in this instance, at the time the utility was taking actions, they were already in a reserved margin shortfall situation that the decision in the 2005-2006 timeframe was that it was urgent for the utility to do this as quickly as it could.

The fact is there was still a reserved margin shortfall situation when this unit was connected to the grid and was available to provide service.

MR. HEMPLING: Let me try to restate what you're saying without any intent to mischaracterize your narrative.

What I'm wanting to understand is the connection between the Commission's prior decision and its pending decision, and what you're saying is that the prior finding of need is relevant to the current finding of used or useful, even if at the point of the current test year the plant isn't carrying out all of the functions that were anticipated at the time of the Commission's prior finding.

Is that consistent with what you're saying?

MR. WILLIAMS: That's consistent with what I'm saying. And that's in recognition of the fact that during the period you're constructing a project, the shareholders and bondholders received a return on that investment through AFDUC.

Once it's goes into service and AFDUC stops, you are no longer receiving that return on investment; and, the recognition under the obligation to serve is that the utility will receive an opportunity to earn a return on investment prudently made, definition of prudently made investment.

I mean this fits it about as close as you could get in terms of prudently made investment where there was a demonstrated urgent need at the time the project was proceeded with, and there was still a need at the time it went into service.

COMMISSIONER KONDO: Mr. Williams, may I ask you a question?

MR. WILLIAMS: Yes.

COMMISSIONER KONDO: I'm not beefing on the need.

But assuming that the reason why it is not being able to function as anticipated or intended is because of problems caused by management.

Is it still in your opinion therefor used and useful; in other words, what management has done or what the Company has done is unreasonable?

MR. WILLIAMS: Okay. I'll respond to the question in general and also specifically in this case.

The Commission can certainly look at the reasons why it's not fully available, but it is, in fact, available to meet the need that it was explicitly added for, which was to address the reserve shortfall situation.

There are other things that this unit will help with as we go forward and it's operating fully on biofuel, but it is meeting the urgent need for which it was added. When we talk about --

COMMISSIONER KONDO: Can I ask you a question like. Like I said, I'm not beefing about the need --

MR. WILLIAMS: Sure.

COMMISSIONER KONDO: -- because I don't disagree that at the time that the CIP docket was approved in 2007, or whatever year it was, that there was a need. And I'm not beefing the fact that because sales are down that there no longer is a need. I think that would be unfair to the Company to pull out the rug from underneath the Company; but, I think the CIP docket, the plant, as they're approved, was conditioned upon use of a certain fuel type. And so need or not, the plant right now is not the plant that was approved.

So I understand your argument about need, but I don't understand how if you don't have the generator that was approved in the CIP docket that it's now used and useful; and, assuming that it was required to use 100 percent bio-diesel or biofuels, and assuming that the reason why it is not used and useful today; in other words, it is not running on a hundred-percent bio-diesel is because of some issue relating to the management of the Company.

How is it now used and useful?

MR. WILLIAMS: Okay. If I examine the original facts, and I wasn't a party to that proceeding, it was added to address an urgent need with respect to reserved margin shortfall. It was recognized, at that time, that the unit would be commissioned on fossil fuel, and that we would have to undergo testing before burning biofuel. There was -- there's been extensive efforts by management to acquire biofuel for this unit.

There are extenuating circumstances clearly as to what's happened with biofuel markets proceeding all the way through the Commission's decision in the biofuel docket with Imperium as to why we don't currently have the biofuel available.

We also have the facts that the Company has done everything within its power to respond to the Commission's decision and to bring biofuel to this island, so the test can conducted, and so that the biofuel will be available on a longer term basis.

I think we've fully addressed the issues. When it was designed, and the proceeding before the Commission was commenced, there was not a biofuel unit. The Company did make sure that in designing and acquiring the unit it would be able to burn alternative fuels. The Company did agree with the Consumer Advocate that the unit would be burning biofuel during its lifetime.

It was also recognized, however, that it was -- it's absolutely essential that you don't forego the warranties on the unit by not testing it on the fuel that it was originally designed on so that you can acquire the benefit of those warranties.

And in any kind of regulatory context, it has to be recognized that if there are extenuating circumstances, what management should do is adjust to those circumstances.

Now if the Commission had a basis for saying that the Company did not undertake these efforts to bring biofuel to the island that would be one thing, but I don't see any basis on the record for such a determination.

COMMISSIONER KONDO: Let's assume that is the case, given the Imperium docket, assuming that it's the Commission's decision that the efforts by the Company were not reasonable in procuring biofuels, would that change your conclusions that it's used and useful?

MR. WILLIAMS: That would not change my conclusion that this particular unit is used and useful because it is actually serving customers and providing a benefit in terms of reducing the reserved margin shortfall. As to what -- I mean, frankly, you're raising a hypothetical situation that goes well beyond the used and usefulness of this unit.

What you're basically saying is this. The penalty the Company should incur for whatever actions it took or did not come -- take with respect to biofuel, the exclusion on this unit on the rate case, I think that goes well beyond any penalty provision in our statute.

COMMISSIONER KONDO: Are you saying that if one of the conditions to the approval of the unit in the CIP docket was that it would run on a 100-percent bio-diesel that the Company can choose to ignore that condition and that the penalty should not be the fact that it is not being used and useful in the traditional sense but that it is sitting there as a stand-by generator?

So what is the consequence of the Company's decision for assuming that it is a Company issue as to why they don't have bio-diesel and biofuels now?

What is the consequence to the Company?

MR. WILLIAMS: Okay, you have a number of questions that --

COMMISSIONER KONDO: Yeah, I'm sorry. I'm rambling on but --

MR. WILLIAMS: That's fair. I'm an attorney I can do that.

(Laughter.)

MR. WILLIAMS: I think clearly the Company does not have the option of ignoring a condition in a Commission decision.

COMMISSIONER KONDO: So what's the consequences?
MR. WILLIAMS: We're obligated to comply with the Commission's conditions. We're also obligated to follow the procedure in the approved stipulation in that docket, which required that if this type of situation developed, and the fuel was not available, we would confer with the Commission and the Consumer Advocate and make sure that this unit is still available to our customers, and, I think, that step is taking place.
COMMISSIONER KONDO: For purposes of emergency use?
MR. WILLIAMS: For purposes of emergency use. And it's clear that the steps are in place to make sure its long-term availability is there for biofuel as well.
COMMISSIONER KONDO: Well, the Company is not running the unit as a peak unit as it had intended to. Correct?
MR. WILLIAMS: They are not running the unit today as a peak unit.
COMMISSIONER KONDO: And that's the intent of the unit?
MR. WILLIAMS: The intent of the unit is to be cycling and peaking. It does run last in the order of priority, as I pointed out, to some extent. I mean, there are certain permitting commissions that apply to the effort that we have to comply with. And I think I just misstated what

that particular addition was.

COMMISSIONER KONDO: I hear you talking about testing, and I understand, from the order, there was a contemplation that the unit would be tested on petroleum diesel.

Testing does not equate to used and useful; is that correct?

MR. WILLIAMS: Testing, per se, does not equate to used and useful, no, but being connected to the grid and being operable and ready to serve customers if that becomes required, does equate to used and useful.

COMMISSIONER KONDO: I think I jumped in front of Mr. Hempling, so I'm going to give it back to him, and I have other questions, but I will give it back to Mr. Hempling.

(Whereupon, Mr. Hempling briefly confers with the Commission.)

MR. HEMPLING: Any other attorneys, in terms of the discussion I was having with Mr. Williams about the meaning --

MR. ITOMURA: Used and useful.

MR. HEMPLING: Well, I was going to get to those words, yeah, it's used or useful according to statute.

Anything to add, Mr. Itomura?

MR. ITOMURA: The Consumer Advocate doesn't have much to add on Mr. William's comments except that, as noted in our response to PUC IR 117, I believe it was; and, also there was an informal response.

As it stands currently, our interpretation was that the unit cannot be considered used and useful, per se, because of exactly what Mr. Williams was saying, given the traditional notion that it would have to be available and be providing service to the consumers.

And based upon the Commission's decision that it can't be dispatched until the fuel issues are resolved, anyway that was the basis for our comment on that, that being traditionally used and useful.

However, other considerations to be taken into account that it can be considered used and useful because of such facts as the peak load -- I guess a need issue, the peak load, as of, I believe, September, late September, September 25th, recorded about 3 percent higher, it's 2 percent higher than the forecast originally provided.

Also, the fact that that this is a critical unit in the event of an emergency, therefore, in the subsequent application by the Company, the Consumer Advocate was in support of allowing this unit to be provided for contingencies such as emergency or state and national securities issues; but, I'm not sure if that entirely answers your question, but, again, the one difference being that the traditional notion it is not currently use and useful -- used or useful.

MR. HEMPLING: Let's put aside the biofuel issue for a few minutes, because I want to make sure that the Commission uses the definition of used and useful.

By the way, the order says -- the order approving the plant going forward happens to use an "and." That's where I got mixed up, and you didn't take an appeal of the order, so we can talk about "and" in this context.

MR. WILLIAMS: Actually, I don't think the order trumps the statute but --

MR. HEMPLING: I didn't think so either, but you didn't appeal it so --

MR. WILLIAMS: I don't think we have to appeal that, Mr. Hempling.

MR. HEMPLING: Okay.

MR. WILLIAMS: Well, that's my opinion as a lawyer.

MR. HEMPLING: Putting the biofuels matter aside, you believe that used and useful is satisfied when either of the factors you just mentioned exists either available for emergencies or available to meet peak?

MR. ITOMURA: Generally, yes, considering that in -- I can't say to any specific cases off the top of my head, but considering the past when this issue has come, it's looking at a facility that is currently, again, capable of providing service.

And, generally, the scenario that was brought up, where you may have had -- whether it's a water Company pump or not, whether it was, at that time, capable of operating; and, in this situation, you have a unit that is currently operating, you know, whether it can operate under authority by the Commission to be recovered that's at issue so.

MR. HEMPLING: Is mere capability of operation sufficient or does the need feature have to exist as well in order to satisfy the statute?

MR. ITOMURA: The Consumer Advocate hasn't spoken specifically on need that I'm aware of, but that would go into our consideration for used and useful. It would be -- need would be and should be a consideration.

MR. HEMPLING: Because if it was near capability, the Company could put any number of plants in there and say, are they capable?

MR. ITOMURA: Correct.

MR. HEMPLING: And you would want all of those to be determined to be used and useful?

MR. ITOMURA: We agree.

MR. HEMPLING: And do you agree with Mr. Williams that in looking at need for purposes of the test year, that the place to look would be the expectations at the time of the approval order as opposed to the facts that exist during the test year; or, do you think the facts that exist during the test year are relevant to determining need?

MR. ITOMURA: I'm sorry, could you restate that question?

MR. HEMPLING: Yeah; and I shouldn't be attributing it to Mr. Williams. Let's me just ask the question.

In determining whether -- in determining whether there is need for purposes of test year inclusion in rates, is the time frame for looking at need, the time of the approval order, or the time in the test year?

And maybe I should explain it more clearly.

If there is hypothetically an urgent need at the time of the approval order; but, for some reason, like load dropping insufficient need during the test year, does that change in facts affect your definition of used and useful?

What time frame are you looking at for purposes of determining need?

Do you know in terms of your view of the statute?

MR. ITOMURA: Considering that, in a typical rate scenario, the idea is to always look forward and rely upon projections. It would be looking at the test year as opposed to time of approval, because the time of approval, we can't put any particular date on that or a particular circumstance and set of facts; so, it would be -- at least my answer to your question would be you'd be looking at the test year and not the date or time of approval.

MR. HEMPLING: Please infer nothing from my arguing with you now, but it seems, to me, that Mr. Williams would respond as follows. There's going to be a need at some point and there was a finding of need at the time of the approval order.

So the fact that during the arbitrary 12-month period that constitutes the test year, there is a need, and it sounds like a good way to cripple the Company's finances and why be technical about it.

What's your response to that type of argument?

In other words, why should the Company suffer because there happens to be, during the test year, less of a need than we know will exist and expect it would exist at the time of the approval order?

MR. ITOMURA: If I may, I think I'll answer it in the manner that at the time there was a docket for or specifically relating to the CT-1 unit, the Consumer Advocate was in support of the Company's demonstration and support for the need of that unit at that time, and not considering that circumstances or financial circumstances that may happen later may change those that the Consumer Advocate support.

MR. HEMPLING: I'm going to try to restate what you just said.

Are you saying that the prior finding of need in the Commission's approval order should bear on the Commission's finding out as to used and useful in this test year?

MR. ITOMURA: Yes.

MR. HEMPLING: All right. What influence should it have?

Should it be binding?

MR. ITOMURA: I wouldn't -- I wouldn't go so far as to say it should be binding. It think it should have -- it should bear weight.

MR. HEMPLING: Let's turn to the biofuels issue for a minute.

As I understand it, the Commission reserved the ability to -- excuse me, the Commission preserved the Company's ability to come to the Commission and say, May we operate this unit with something other than biofuels?

Is that your understanding of the Commission's order?

MR. ITOMURA: Yes.

MR. HEMPLING: So given that the Commission left that opportunity open to the utility, does the existence or absence of the biofuels contract have anything to do with the determination of the used and usefulness of the unit?

MR. ITOMURA: Again, answering with the understanding that is more along the lines of a hypothetical versus what the Consumer Advocate had to consider when it was making its own interpretations and analyses, one problem that we had to try and, I guess, consider is that whether the focus in any particular docket and maybe not even specifically the CT-1 unit itself, is centered on one of possibly three areas.

One being conservation or energy efficiency, costs is another; and, possibly reliability of a system. And so some of the -- some of the concern that we had was trying to identify where the Commission's focus is in any particular docket.

So, again, with respect to attempting to answer some of the Commission's questions, it was keeping those concerns in mind and saying, While we understand that -- this may not be getting back to used and useful -- while we understand that this is not used and useful under a traditionally notion, we understand there's a need, but that need is not tied to costs, because it's going to cost more to pursue or promote renewable energy alternative fuels.

MR. HEMPLING: I'm not sure I'm following the answer, but, Mr. Williams, let me ask you this way, and I'm not meaning to help to cause confusion here.

But inasmuch as the Company has an opportunity to ask the Commission for permission to operate the unit with fuel other than biofuel, do you see the decision about used and usefulness as independent from the question of what fuel is being used?

MR. WILLIAMS: I think the question of used and useful goes to the soundness of the decision to add the facility. It goes to whether it can be used and it can be used. We know that it is valuable to the Company in meeting its service obligation in the event that there is a shortfall of generation.

MR. HEMPLING: All right.

MR. WILLIAMS: The Company has worked with the Commission on about what the interim operating strategy for that facility should be; and, it's been determined that, at this time, that should be in an emergency used capacity.

So I don't think it's a real question as to whether we should come in and ask to run it on something other than biofuel.

MR. HEMPLING: That's exactly what I'm asking you.

The decision about the fuel to use is independent of the decision whether the plant is being operated in a way that satisfies the used and useful test?

MR. WILLIAMS: In major part, yes; but, it's also you take into account the situation you have at this time.

And, so, I think, as the stipulation contemplated, we would look at our circumstances and determine how we should be operating this unit in the circumstance where biofuel is unavailable at this time; and, that's exactly what's taken place, as far as I understand it.

MR. HEMPLING: Okay. I'm going to go to the fact witnesses. I guess --

MR. WILLIAMS: Yes, just --

MR. HEMPLING: Go ahead.

MR. WILLIAMS: -- a couple of points.

One, our position is there's no issue in this docket right now that it's needed this year. It is needed this year.

MR. HEMPLING: I'm going to ask the fact witnesses about that. I really meant to just call on you for legal interpretation right now. It's not oral argument time.

If I may, Mr. Simmons, are you the author of ST-7? Who's -- are you ST-7?

MR. SIMMONS: ST-17E.

MR. WILLIAMS: Mr. Giovanni is ST-7.

MR. HEMPLING: My purpose, at this point, in the afternoon, is to gather for the Commission is a clear and understanding of the facts in the law; and, then they'll be ample time for argument the inadequacy.

Good afternoon, Mr. Simmons -- I'm sorry, good afternoon, Mr. Giovanni.

MR. GIOVANNI: Good afternoon, Mr. Hempling.

MR. HEMPLING: Can you turn to pages -- I'm sorry, it's between pages 14 and 21 of Exhibit ST-7.

MR. GIOVANNI: Yes.

MR. HEMPLING: Oh, I see what I've got here. I'm actually looking at IR -- PUC IR 155 which paraphrases from

ST-7. Sorry to jump you around.

MR. GIOVANNI: Okay.

MR. HEMPLING: In your response to PUC IR 155, you state that the CT-1 unit, quote, provides significant operational value in three general ways. And then you refer to allowing Hawaiian Electric to more effectively integrated decreasing levels of renewable; secondly, to eliminate the need to commit up to two other cycling and/or peaking units.

Do you see all that?

MR. GIOVANNI: Yes, I do.

MR. HEMPLING: And, thirdly, delivers on Hawaiian Electric's fundamental obligation to serve.

Do you see all that, sir?

MR. GIOVANNI: Yes, sir.

MR. HEMPLING: Okay. At this point in time, meaning October, November, let's starts with the first one.

Is the CT-1 unit currently, quote, Allowing Hawaiian Electric to more effectively integrate increasing levels of renewable variable integration resources, close quote; or, is this more statement about its future use and usefulness?

MR. GIOVANNI: It's primarily about its future use as we expect higher and higher levels of renewable or variable generation to come online; but, even today, because of its design cycling and keeping capabilities, the fact that it could ramp at a rate of 13 megawatts, which is two or three times faster than any other unit on our system, it, today, in its current operational state, is capable of providing this benefit.

MR. HEMPLING: Okay. The second item, Is it capable of providing, at this point in time, capable of providing the second benefit, which is eliminating the need to commit up to two other cycling and/or peaking units to provide 30 to 50 megawatts of generation and 60 to 80 megawatts as spending reserve.

Is that the case today?

MR. GIOVANNI: Yes, that is the capability today and it would be used in that way; particularly, if that additional increment of spending reserve is used from hours or minutes as opposed to all day.

MR. HEMPLING: It could do that now?

MR. GIOVANNI: It's capable of doing that now.

MR. HEMPLING: And with respect to the third item, Is it capable now of, quote, Maintaining an appropriate and responsible level of firm generating capacity on Oahu, close quote?

MR. GIOVANNI: It's capable and has already provided that service.

MR. HEMPLING: We're not overstating what it can do right now because there's the testing that's -- excuse me.

Is the testing still going on?

MR. GIOVANNI: The testing is essentially complete. We have a little bit more testing to do for some punch-list items that we have working through the warranty issues and fundamental issues of completeness with the contractors; but, I would say we are past 90 percent point of the testing being complete.

MR. HEMPLING: And when would you expect it to be a hundred percent?

MR. GIOVANNI: Probably, the longest lead item that I'm aware of is that we're going to be doing some change out of some 480-volt motors throughout the facility and following the change-outs of the last one of those motors. We will do an operational test to prove that it's working as designed; and, that could be six to nine months away.

MR. HEMPLING: There's no warranty restriction, at this point, on your using the unit for any of the three purposes that we discussed a few moments ago?

MR. GIOVANNI: No.

MR. HEMPLING: What about in terms of prudent operation of the plant in terms of preserving its long-term delay to operate, is there any risk to the unit of using it in any one of these three ways?

MR. GIOVANNI: No, I would add to that that we do have a very comprehensive monitoring system, performance monitoring system, as part of the package; and, just like any generating unit in our fleet, if it did start experiencing abnormal characteristics, we would interrupt its operation until we investigated and corrected any potential problems that would threaten it's viability; but, that's the case with any generating unit.

So I would say that this unit is at an operation state, it's equivalent to the other generating units on Oahu.

MR. HEMPLING: I'm sorry, you dropped at the end there.

You said it's equivalent to?

MR. GIOVANNI: That of any other generating unit, firm power generating unit, in our fleet connected on Oahu.

MR. HEMPLING: Are you the person to talk to about the air quality permits process?

MR. GIOVANNI: I know some parts of it; and, if I don't know, I think I'll let you know, and it depends on the question.

MR. HEMPLING: What fuel is the plant using now?

MR. GIOVANNI: It's using petroleum diesel.

MR. HEMPLING: And with respect to the permitting process associated with that fuel, where does the unit stand?

MR. GIOVANNI: It has met all of its obligations stemming from the initial firing of the unit; and, the critical piece of that was the commissioning of the continuous emission monitoring system and the source testing that was conducted as part of the reliability testing about a month ago.

MR. HEMPLING: So there are no further steps to take with respect to permitting for use of the currently used fuel?

MR. GIOVANNI: There's continuing steps that has to be reaffirmed and retested and continuously monitored. So there's a lot of reporting requirements going forward, but there are no -- to us a phrase -- go-no-go to points yet to test as far as the air permit; and, we are still finalizing the report, technical report, the consultant's report from source tests, and that'll be formally submitted to the Department of Health, but we expect no difficulties in that because the preliminary results from all the testing are that it did very well.

MR. HEMPLING: So with respect to the fuel you're currently using, there's no permitting bar to full usage of the unit in this test year?

MR. GIOVANNI: That's correct.

MR. HEMPLING: All right. With respect to biofuel, what is the status of the permitting process?

MR. GIOVANNI: Well, we have to run the equivalent set of source test to demonstrate the -- that the unit is capable of performing under the conditions of the existing air permit. It's called an alternative operating scenario, an alternative fuel; so, we would need the bio-diesel, the test of the bio-diesel, and the plan is to do some tuning with that bio-diesel; basically, the tuning of the water injection ratio at different operating load points on the unit and then we would do a battery of error emission test very identical to the ones we just did on petroleum diesel, file that -- and then file that report with the Department of Health and EPA.

And under the conditions of the permit, we would expect they would process that and then give us the -- the permit would be modified so that we could run biofuels, bio-diesel in accordance with the results of that test.

MR. HEMPLING: Well, what's your current expectation for how long that permit process will take?

MR. GIOVANNI: I have heard estimates, but I couldn't speculate myself what that might take. I know that once we get the allotment of fuel, we should be able to perform the test within a matter of a week or two; and, then from that point forward, it's pretty much out of our hands.

MR. HEMPLING: Back to you, Mr. Williams, for a moment. I want -- again, I want to try succinctly to understand how your view of the law and the facts put together as follows. Even if the Commission were to -- oh, excuse me, not even -- if the Commission were to insist that the plant run only on biofuels, your view remains that the plant satisfies the statutory used or useful test because of the current benefits it provides in terms of, at least emergency, and anything else?

MR. WILLIAMS: Yes.

MR. HEMPLING: Anything else besides emergency, would you count if the restriction to biofuels remained?

MR. WILLIAMS: If the restriction to biofuels remains, it's still used or useful.

MR. HEMPLING: Because of which facts?

MR. WILLIAMS: Because of the availability for the unit to serve well, if there were to be some long-term unavailability of biofuel, then you will relook at what those restrictions are based on reason for the unavailability. I can't imagine what those circumstances would be right now.

We're in the process of acquiring the biofuel and it will be available as far as I can tell; but, regulation doesn't provide for situation -- doesn't arbitrarily disallow costs because you have to change the manner in which it's used and the circumstances have changed. That's some future condition we don't have to address because right now biofuel will be available.

MR. HEMPLING: In the test year?

MR. WILLIAMS: Biofuel will be available on a longer term basis after 2009. The test fuel will be available and the test will be conducted this year. They have ordered test fuel, but that will be conducted this year. It's currently available to serve customers. And, I guess, this is not just my opinion.

We've actually cited cases that address these various types of circumstances for situations where facilities are even held in cold standby and not operated at all, and they're deemed to be used and useful.

MR. HEMPLING: Let me -- I'm not fully understanding what you're saying.

Is your assertion that the plant is used and useful -- is your assertion that the plant is used and useful because notwithstanding the Commission's current restriction to biofuel that it's possible for the Commission to change that restriction and, therefore, the plant is used and useful, is that what you're saying or do I misunderstand you?

MR. WILLIAMS: That would misstate what I'm saying. I am saying the unit is completed. It's connected to the grid. It's available to serve customers. If there are circumstances that are permitted by the Commission, even under the circumstances where we don't have biofuel to serve customers, we've operated it once in that fashion. That was the reason it was primarily acquired; plus, the fact is that we are in the process of acquiring biofuel.

And, fundamentally, what other jurisdictions have found that it would be poor regulatory policy to disallow the costs of a major investment in a facility to serve customers under these types of circumstances.

MR. HEMPLING: I'm not meaning to split hairs with you, but I'm following up on something Commissioner Kondo was aiming at, and I'm not meaning to be in argument with you but to ask you this question.

If the Commission were to bar use of the unit, except if it burned biofuel, how was the unit then used and useful if it cannot be used absent biofuel, how is the unit then used and useful, in your opinion?

MR. WILLIAMS: If there were a lawful order under which we were barred from using this unit at this time, and we were in the process of meeting that requirement, it would be property held for future use and would still be in rate.

MR. HEMPLING: Right, that helps me understand it. That your theory moves from -- and I'm not suggesting you're doing something wrong, but your theory moves from used and useful to property held for future use.

MR. WILLIAMS: Mm-hmm. And that's under a hypothetical where we are barred from using this unit 100 percent altogether and that that's a proper order.

MR. HEMPLING: Right, that was the hypothetical that I offered you. I think we understand each other.

MR. WILLIAMS: Thank you.

COMMISSIONER KONDO: Can I ask a follow-up question?

MR. WILLIAMS: Yes, sir.

COMMISSIONER KONDO: The dispatchability of the unit on a regular basis doesn't come into your equation as to whether or not this unit is used and useful; is that correct?

MR. WILLIAMS: That is correct at this time under the circumstances for this unit.

COMMISSIONER KONDO: Thank you.

MR. HEMPLING: Somebody very technical supplied the following few questions, Are biofuels more corrosive to pipes and machinery than conventional fuels?

Is that for you, Mr. Giovanni, or Mr. Simmons?

MR. GIOVANNI: Actually, I've asked that question myself, and I don't have answer. I don't know if we ever will have an answer.

MR. HEMPLING: I can't hear, sir.

MR. GIOVANNI: I'm sorry. That is a question to be answered in a longer term, I believe; but, in the short term, all indications that the -- that I'm aware of -- specification for the fuel will not adversely effect your terminal pipes and valves as compared to diesel.

MR. HEMPLING: How about maintenance costs for the unit?

The maintenance costs over the long-term would that vary with which fuel is used?

MR. GIOVANNI: I expect not.

MR. HEMPLING: What are you basing that expectation on?

MR. GIOVANNI: Well, basically, the only thing that's really different is the combustors and the fuel-touching equipment. We will plan to operate the unit in terms of heat transfer and combustion conditions, emissions equivalently, that are very similar for both fuels. If anything, the biofuels appear to have less, some of the trace elements in them that might cause us some problem.

So, from an operational point of view, not necessarily a design point of view, but from an operational point of view, I don't expect that there would be a material difference in the maintenance requirements operating unit on bio-diesel as equivalently controlled.

MR. HEMPLING: Thank you.

Commissioners, I was, at this point, going to move from the issue of used and useful to the issue of the timing of recovery; but, if there are other questions from the Commissioners used and useful area, this would be a time.

CHAIRMAN CALIBOSO: Mr. Hempling, I have some follow-up.

I think really a lot of these questions have been answered or asked, but I'd like to ask them again to put them altogether. I'm going over your response to PUC IR 117.

I'm not sure it this goes to Mr. Williams or anybody else, but I want to understand you're saying now that this unit is always used or useful under the statute; and I've been using a date of August 3rd, 2009, and I realize it's in your response, but can you explain the significance of August 3rd, 2009, and why it's used and useful?

MR. WILLIAMS: Do you want a legal answer, the accounting answer, or the operational answer?

I'll give the legal answer and it's, in part, based on the accounting answer and the operational answer.

That is the date at which it was connected to the grid and deemed to be available to serve customers after having undergone its original performance testing.

As Mr. Giovanni said, there's still -- there's always with fuel generating use, there's some follow-up testing to fix punch-list items and things like that; but, the basic fundamental availability of the unit to serve customers is as of August 3rd.

As of August 3rd, because of that determination, the Company is no longer accruing AFDUC; so, under the way regulation works, the return on investment shifts from AFDUC to putting the plant in service under rate base. That's basically this determination you're making, as of August 3rd, and that's the reason for the August 3rd date.

There are -- there have been situations in the past where the Commission has actually made some -- or rulings and the Consumer Advocate has entered into the conversation among whether something should have been determined to be in service sooner, so we're very careful about that, and we follow that rule even if it's to the disadvantage of the Company to stop accruing AFDUC to because we're not currently earning on that investment.

CHAIRMAN CALIBOSO: Okay. And you agree that there is the requirement that biofuels be used in this share rating unit. Correct?

MR. WILLIAMS: Generically, yes.

CHAIRMAN CALIBOSO: Generically?

MR. WILLIAMS: There's a -- there are a lot of caveats to that. I mean, yes, this is a biofuel unit. I think that's pretty clear.

CHAIRMAN CALIBOSO: Has the Company satisfied the biofuel requirement yet as of August the 3rd?

MR. HEMPLING: On the longer term basis, no.

CHAIRMAN CALIBOSO: As of August 3rd, has it satisfied the biofuel requirement at all?

MR. WILLIAMS: The Company is in the process of acquiring the biofuel and converting it through the test procedure that was recognized in the CIP docket that that would have to occur. I mean, clearly, even in that docket, it was recognized the day it went into service' --

CHAIRMAN CALIBOSO: Well --

MR. WILLIAMS: -- and it would not be operating on biofuels.

CHAIRMAN CALIBOSO: Thank you. Let's go through that in a minute.

But, as of August 3rd, the date that you said this is used and useful, the biofuel requirement has not been satisfied. Right?

MR. WILLIAMS: My interpretation of the biofuel requirement is that we go through the process of testing it, changing the air permit and acquiring the biofuel.

CHAIRMAN CALIBOSO: So your interpretation --

MR. WILLIAMS: And that was to occur after the in-service date; so, I think we're in the -- it's hard it say it was satisfied as of the in-service date.

CHAIRMAN CALIBOSO: Well, is it fair to say that it's not been satisfied as of the in-service date; or, are you saying you started the process and that satisfies it?

MR. WILLIAMS: Well, yes. And I'm saying even the requirement was not that it'd be satisfied as of the in-service date. It was recognized you had to go through a process of testing, getting the air permit.

CHAIRMAN CALIBOSO: Well, let's go through that process in a minute.

But if you're saying that it's in service as of August 3rd, are you saying that the biofuel requirement is not relevant to the determination of used or useful under the statute?

MR. WILLIAMS: I think that biofuel can be relevant but only in the sense of are we ignoring the biofuel requirement.

As of August 3rd, clearly we're not ignoring the biofuel requirement. Clearly, as of August 3rd, the unit is available to serve customers; so, from a legal standpoint, it is used and useful.

CHAIRMAN CALIBOSO: Well, your position is that the biofuel requirement may not be satisfied as of August 3rd?

MR. WILLIAMS: My statement is you do not have to be able to operate it a hundred percent on biofuel as of August 3rd for it to be used or useful.

CHAIRMAN CALIBOSO: And why is that?

MR. WILLIAMS: Maybe that's a better way of stating it.

CHAIRMAN CALIBOSO: And why is that?

Where is that?

Is that in -- was that in the stipulation somewhere or in the order, the stipulation that the Commission approved in approving CT-1, that's what I'm referring to.

Is it somewhere in there that says that?

MR. WILLIAMS: No, but what it did say in my reading of that document, and I know Mr. Alm and others, were participants in that docket; but, certainly, it was contemplated that -- two things.

One you would acquire biofuel and you would test it. You would get the permit revised. All of that was expected to happen after it went into service; so, it was in a precondition to it going into service.

And then, in addition to that, the stipulation, as I read it, clearly recognizes that there can be circumstances under which biofuel is not available, and then you will then work with the Consumer Advocate and the Commission to determine under what circumstances you would operate it in those conditions; and, I think, that's what's taken place.

CHAIRMAN CALIBOSO: Right. So under that stipulation, I think it flowed like this, you would -- the Company would apply to an RFP for the biofuels, at the same time they would run testing of petroleum diesel, right, and at a certain point it would covert and get the permit to run bio-diesel; and, then that would, at that point, it would run bio-diesel and it would completely satisfy the biofuel requirement. Correct?

MR. WILLIAMS: Correct.

CHAIRMAN CALIBOSO: And you're saying -- correct?

MR. WILLIAMS: I believe that's correct.

CHAIRMAN CALIBOSO: And you're --

MR. WILLIAMS: Mr. Alm would be better to address those specific circumstances but that's my understanding.

CHAIRMAN CALIBOSO: But you're saying that in between the time that the biofuels were finally approved and converted under your permit and after the testing, it's already used and useful. Correct?

MR. WILLIAMS: Yes.

CHAIRMAN CALIBOSO: Is there anything in the stipulation that provides for that, that part of the process determines when it's used and useful?

MR. WILLIAMS: I don't know that the stipulation attempted to address that. That's just standard regulatory law.

CHAIRMAN CALIBOSO: What is standard regulatory law?

MR. WILLIAMS: It's used and useful when it's available to serve customers.

CHAIRMAN CALIBOSO: Okay.

MR. WILLIAMS: I don't think persons drafting -- again, I'm not the proper person for that. I think that was the Company and the Consumer Advocate, Ms. Awakuni and Mr. Ong would be the persons to ask that specific question, what was contemplated at that time; but, I think clearly just the words of the stipulation, to me, it's clear that it was contemplated that we would commission this unit and then do the biofuel testing.

CHAIRMAN CALIBOSO: Thank you, Mr. Williams.

COMMISSIONER KONDO: I have some questions, Mr. Hempling.

Mr. Itomura, when I read your response to PUC IR -- it must be 117 as well.

Contrary to what you said in response to Mr. Hempling, my understanding is the Consumer Advocate's position is contrary to Mr. Williams' position, because I understand your response to be that the unit is not used and useful under traditional ratemaking analysis.

Mr. Williams' position, as I understand what he says, to be that it is used and useful under the traditional ratemaking analysis.

Did I understand your response to Mr. Hempling or did I misunderstand your response to the IR?

MR. ITOMURA: I may not have been real clear, but I think I started off by saying the CA is in agreement with the notion of its used and usefulness; but, as stated in the response to PUC IR 117, it is not used and useful under the -- for reasons stated; one, being that the Commission's ruling in the prior docket regarding the CT-1 unit.

So I did attempt to make distinction that we're not in agreement with the fact that it is -- at this time, it is not used and useful for those reasons.

CHAIRMAN CALIBOSO: I'm sorry, could you repeat that last part of that sentence?

It is not used and --

MR. ITOMURA: Per our response to PUC IR 117, it is not used and useful due to the ruling in the docket, I believe -- what was it? -- 05145, that the Commission shall not deem the unit used and useful; and, that's the Commission's order that stated, Shall not be used and useful unless it's running on biofuel.

So relying upon that, the Consumer Advocate believed that it couldn't -- could not provide a statement that it is currently used and useful.

COMMISSIONER KONDO: So from the Consumer Advocate's position, the determination as to whether it's used or useful, one of the factors is the ability of the Company to dispatch the unit on a regular basis, or any time, not just emergency situations; is that correct?

MR. ITOMURA: I'm sorry, could you restate?

COMMISSIONER KONDO: Sure.

In the Consumer Advocate's determination of what is used and useful, one of the factors that you folks look at is the ability of the Company to dispatch the unit on a regular basis; is that correct?

MR. ITOMURA: Correct.

COMMISSIONER KONDO: And that's contrary to what Mr. Williams said because that was not a factor in his analysis, you understood that?

MR. ITOMURA: Well, I'm not going to speak to what he said. I can't recall everything specifically; but, again, in answer to your question as to what we base our consideration on, is, as you stated, the notions of it being providing or capable of providing service to the consumers; and, with the interpretation that useful relates to need, that was in response to Mr. Hempling's questions where we consider need anywhere in that equation.

MR. HEMPLING: Going back to two answers for a moment, sir. I think this is what you're saying.

If it's illegal to operate the unit because the Commission order says don't operate the unit unless there's biofuels, then the unit is not used and useful.

Is what your view is?

MR. ITOMURA: That was our -- that was our response, correct.

MR. HEMPLING: Okay. And that sounds like a difference of opinion with Mr. Williams, if I understand Mr. Williams correctly.

I think he characterized this hypothetical as being poor regulation, but you're view is if it's illegal to operate the unit, then one can used words like in-service for the unit cannot be used and useful from a statutory standpoint, if it's illegal to operate it, am I stating your opinion correctly?

MR. ITOMURA: Without going into the definition of "illegal" as it's being used in the question, yes, I agree.

MR. HEMPLING: Well, how would you change my question so that you're comfortable it?

Should I say unlawful in violation of a Commission order?

MR. ITOMURA: In violation of a Commission order.

MR. HEMPLING: And so a unit cannot be deemed to be used and useful if its use would be in violation of the Commission order, is that your legal view?

MR. ITOMURA: In violation of a Commission order specifically stating so, yes.

MR. HEMPLING: Do you view the Commission's current orders, I'm not referring to your stipulation, I'm referring to the orders, do you view the Commission's orders as prohibiting the use of this plant absent biofuels?

MR. ITOMURA: Yes, there was specific reference to this plant being run by biofuel with the exception that in the case of interruption of fuel source then such -- in that situation, HECO would be working with the Consumer Advocate.

MR. HEMPLING: Okay. I'm really not looking to the stipulation. I'm looking to the order.

Did you view the -- I understand about working together; but, in terms of interpreting the order, do you understand the order to prohibit the operation of the unit, except if the unit is using biofuels; or, do you view the order has having an out -- not an out -- do you view the order as allowing operation of the unit with the fuel other than biofuels?

You can say you're not sure. It's not your order. It's the Commission's order, but we're just wondering.

MR. ITOMURA: I knew that -- I mean, I do know that we had discussions internally regarding the CT -- the CT-1 docket and the interim order. Unfortunately, I don't have the prior docket order in front of me. But, again, in answer to your question, first of all, is I'm unsure at this time.

However, with respect to the Commission's order, our understanding was that it could not be run on fuel other than biofuel.

MR. HEMPLING: Okay. I want to make sure you and I understand the issue here for the Commission. It has to do with Commission's operating consistently with its orders and operating consistent with the statute.

Hypothetically, if the Commission made a policy decision, in terms of regulatory policy, that the Company should begin recovering costs associated with this unit; and, if the statutory prerequisite for recovery is a finding of used and useful; and, if -- this is all ifs -- and if the approval order prohibits running the unit without biofuel, and if your legal view is correct that a unit cannot be used and useful if it's operating in violation of a Commission order, then does the Commission have to issue some order allowing the running of the unit on something other than biofuels in order for the costs of the unit to enter rates?

MR. ITOMURA: At this time, that is -- that is our . . . Mr. Alm provided some history on the stipulation. I know you don't want to speak as to the stipulation, but maybe one note needs to be made that the 05-0145 order made reference to the stipulation; so, there was no specific mention of whether the unit needs to be run specifically on biofuel or not.

However, it was mentioned in the interim order that it shall not be run on biofuel. And in responding to PUC 117, yes. And in answer to your hypothetical, it would be indifference to the Commission order that the unit not be run on biofuel; and, it is our belief that it would -- cannot be run, it cannot be used and useful without running on biofuel.

MR. HEMPLING: So are you saying that the order in Docket No. 05-0145, the order dated May 23rd, 2007, is your interpretation that the order does not prohibit the use of the unit, the running of the unit without biofuels?

I'm sorry, I should state that in the affirmative.

Are you saying that the order does not insist that the unit be run with biofuels only, that the order itself provides the flexibility just as the stipulation does?

MR. ITOMURA: Ideally, I would like to go back and specifically refer to a particular line, if I may; but, that is the general understanding, and in trying to recollect our own internal discussions, it was not clear that there was a prohibition in 05-0145, the so-called quote/unquote out was that the parties would be working together to make that determination but with the understanding that what was clear is if it was not biofuel, it would be temporary; so, therefore, the ultimate fuel was biofuel.

MR. HEMPLING: Okay. It's possible the Commission will ask the parties to brief on this, because when the Commission writes an order, it has to pull all of these things together in a manner that is consistent and recognizable prior statements on the issues.

COMMISSIONER KONDO: Yeah, I have a couple of questions. I'm not sure if Mr. Williams would be the right person for this; but, if the Commission disallows CT-1 in this rate case, what does that do to the settlement, because I know we're here basically based on the settlement?

What does that do to the settlement or what does that do to what the Commission's ultimate decision would be?

MR. WILLIAMS: If the Commission disallows CT-1 in rates in this rate case, first of all, we would have to understand the reason for that disallowance, even if it's somehow -- and I don't think there's any lawful basis for this determining whether it's not used or useful and it will be property held for future use; so it would still be in the rate base.

COMMISSIONER KONDO: Okay. My understanding if it's property held for use, you don't get depreciation -- you don't get to depreciate the asset. Correct?

MR. WILLIAMS: That's correct.

COMMISSIONER KONDO: Okay. Is that situation, is that -- okay, let's take that scenario.

MR. WILLIAMS: The depreciation starts the year after it goes into service. There is no depreciation expense for this unit in the stipulated revenue requirements.

COMMISSIONER KONDO: And assuming that --

MR. WILLIAMS: It would not change the revenue requirements associated with the unit.

COMMISSIONER KONDO: So whether if the Company allowed it to go into rate base or it was property held for future use, you're telling me that the revenue requirement would remain unchanged?

MR. WILLIAMS: The revenue requirement would be the same whether it was property held for future use or plant and service, it would still be in rate base. It would still be -- assuming the stipulation between the parties stand, it would still be based on the estimate as of the update in December, rather than the final estimate we now have. It will still be on an average year test year basis.

The matter of fact of that is that only one-half of the 163 estimate at the time ends up in the revenue requirement. That would be the circumstance.

COMMISSIONER KONDO: I have a question for the Consumer Advocate's expert. I'm not sure if it's Mr. Carver or Mr. Herz.

Are you aware of any other situation where you have a significant asset like CT-1 where the reason why it's not -- I know Mr. Williams would disagree about this characterization, but assuming that it is not used and useful, the reason why it is not used and useful is the fault of management?

Are you aware of another situation that that has occurred in another jurisdiction; and, if so, could you tell me what the Commission has done in that circumstance to address the asset?

MR. CARVER: I generally recall a coal unit in Missouri in the early 1980s where the company placed the unit in service and sought to include the unit in rate base for that rate case; and, during the staff's review of what constituted -- I was part of the staff at the time -- as part of the staff's review as to whether that unit was in service, the staff concluded that it had not met its operational and testing requirements that the Company had prematurely declared the unit to be in service; and, the Commission excluded the unit from rate base in that case.

But, it wasn't a matter of was it the right fuel. It was a matter of did it meet the technical requirements in Missouri of used and useful; and, the staff concluded, and I believe the Commission agreed, that it did not.

COMMISSIONER KONDO: Mr. Herz, anything to add?

I know that we had discussions with Mr. Williams about the bio-diesel or biofuel requirement to fuel the unit, and I understand from Mr. Williams that that issue is a non-issue from his perspective for purposes of determining the unit to be used and useful.

What should be the consequence to the Company where the Company does not follow the Commission's directive as to the fuel type?

MR. CARVER: First of all, let me say that I'm not familiar with the Consumer Advocate's response to PUC IR 117.

COMMISSIONER KONDO: Who did the IR 117 response?

MR. ITOMURA: The office did, the counsel.

COMMISSIONER KONDO: Thank you.

And my question really has nothing to do with the response --

MR. CARVER: I understand but I wanted to -- I'm not familiar what's in that response.

I guess, from my personal perspective, if the Commission had required the unit to start up and undergo operational testing on bio-diesel and the Company failed to heed that directive, then I can certainly understand a determination that the unit had not met the Commission's requirements; but, if the understanding going in was that the unit would need to start on diesel for startup and go through performance testing for maintenance in warranty purposes under diesel, but then the Company failed to, through be it management inattention or management imprudence, failed to pursue the next steps to make the unit operable on bio-diesel, then I think a complete disallowance from rate base would be warranted.

That's not the dialogue that I'm hearing coming from the Company that they're going through the progressive steps to satisfy the warranty requirements, then obtain the necessary permits from DOH and EPA so that they can get the bio-diesel operating permit.

COMMISSIONER KONDO: Assuming that they get the bio-diesel operating permit; but, at that point, there is no fuel, no bio-diesel throughout the unit; therefore, no ability to dispatch a unit on a regular basis, nonemergency basis, what is your opinion as to used and usefulness of the unit?

MR. CARVER: My answer would depend on why the bio-diesel fuel was not available.

COMMISSIONER KONDO: Assuming --

MR. CARVER: It wasn't through inaction of the Company to obtain a reliable and timely supply of bio-diesel bordering on management imprudence, that's a different response --

COMMISSIONER KONDO: Let's assume that --

MR. CARVER: -- being the market failing to provide a reliable supply.

COMMISSIONER KONDO: Let's assume it's a management issue.

MR. CARVER: Under that assumption, then, I think, complete disallowance from rate base might be warranted barring some legal objection to excluding it from even inclusion in plant held for future use.

COMMISSIONER KONDO: I'm sorry, would you try that last part about plant held for future use again?

MR. CARVER: Not being an attorney, I'm not aware of whether there could be some statutory limitations on the Commission's ability to not only exclude the plant from plant and service, the investment in the facility but, also to excluded from plant held from future use.

If the Company was imprudent as a matter of fact and as a matter of law, as long as the Commission weren't barred from complete exclusion from rate base, then that would be a remedy the Commission could take until the Company complied with the bio-diesel fueling requirement.

COMMISSIONER KONDO: All right. Thank you.

CHAIRMAN CALIBOSO: Mr. Hempling, do you have more follow up?

MR. HEMPLING: Yes, sir.

Well, I was going to turn to the timing of recovery issue, but it might be useful to pause and talk about the criteria for property held for future use since --

CHAIRMAN CALIBOSO: Mr. Hempling, before we go over that, could I follow up?

MR. HEMPLING: I'm sorry, please.

CHAIRMAN CALIBOSO: I'd like to explore one more of the theories that, I think, the Company mentioned in this used and useful issue.

I think it's paragraph 8 of the stipulation which is quoted in -- the stipulation in the CT-1 docket which is quoted in the -- on page 32 of the order approving CT-1, and, I believe, Mr. Williams, you mentioned that is the one of about interruption of biofuel supply emergency use.

We have extra copies, if anybody needs a copy.

MR. WILLIAMS: I think that we do have a copy of that.

CHAIRMAN CALIBOSO: You do have a copy?

MR. WILLIAMS: Yes.

Could I request Mr. Alm to come up as well because he's more familiar with the specific provisions of this --

CHAIRMAN CALIBOSO: Okay. Thank you.

MR. WILLIAMS: -- stipulation.

CHAIRMAN CALIBOSO: Mr. Alm, do you have it?

MR. ALM: Yes.

CHAIRMAN CALIBOSO: If you could read that paragraph 8. I want to make sure I understand the Company's alternative theory on this.

MR. ALM: It reads if there is an interruption of the biofuel supply for an emergency or operational problem that would affect the use of this CT unit, Hawaiian Electric, in work with the Consumer Advocate and the Commission, to attempt to address such contingencies.

CHAIRMAN CALIBOSO: Okay, thank you.

Now would say you there has been an interruption of the biofuel supply?

Was there an emergency or an operational problem that would affect the use of the CT unit?

MR. ALM: I think when we came to talk to you we talked about operational needs, and we have an understanding that you and the Consumer Advocate that any operational problem on emergencies we have the ability to dispatch the unit, which we have once already. I'm not sure, at this point, I would argue that we have an operation, that we have a supply problem.

MR. HEMPLING: I'm sorry, can I just ask for clarification, the emergency referred to in paragraph 8, I assume, concerns an emergency that effects the use of the CT unit, your answer, sir, was just referring to emergencies elsewhere on the system that my warrant use of the unit?

Could you clarify, please?

MR. ALM: Okay. I'm not sure I understand the distinction, but we talked to the Commission about in executing this particular paragraph, was that if there was a system challenge that required us to use CT-1 for the purpose for which it was intended, then we would have the ability to use it today; and, our understanding from the Commission and Consumer Advocate as we could; and, in fact, we have executed to that understanding once already and used the --

MR. HEMPLING: I'm sorry, to interpret you, Chairman, but the word "emergency" in paragraph 8, does that refer to the type of emergency you were just discussing orally or does that refer to an emergency that's going to interrupt the unit just as a interruption in the biofuel supply would interrupt the unit?

I just want to make sure you're answering his question.

MR. ALM: I don't think that we would operate the unit if the problem was with the unit.

MR. HEMPLING: Right. Isn't that --

MR. ALM: So if it's a problem with the system, that would authorize us to talk to the Commission and the Consumer Advocate about using the unit; in this case, using petrodiesel and that's . . .

CHAIRMAN CALIBOSO: So you'd be using the unit, as you said, with petrodiesel, not biofuel, under this --

MR. ALM: Right.

CHAIRMAN CALIBOSO: -- authority?

MR. ALM: Right, right. But we'd have to talk to you and the Consumer Advocate first.

CHAIRMAN CALIBOSO: Which you did?

MR. ALM: Which we did.

CHAIRMAN CALIBOSO: And maybe, for the record, can you explain?

I know there's some letters.

MR. ALM: Because -- I don't know how far back to step here. The process contemplated and the stipulation did not go as planned because the Imperium contract was rejected; so, the sequence that we had expected when we did the stipulation is not how it played out.

So because we had to go back and rebid, there is a period of time after which we've done most of the testing but before which phase two, if you will, which is the testing phase where the bio-diesel occurs.

So, in part, because this is usually our peak time of year, we discussed with you and the Consumer Advocate whether if there was a system need, we could use it now because it is on the system ready to go if there was a system need that made it important for us to do so, and we outlined some circumstances under which that might be true; and, as provided in the stipulation, we met with you and the Consumer Advocate to go over those and got an approval to use the system under certain conditions as to notify you and the Consumer Advocate when we do so; and, we have executed it to that understanding, yes.

CHAIRMAN CALIBOSO: Thank you.

And what I'm trying to understand is, Does that give a viable argument that the unit was used or useful for that purpose even though biofuel is not used?

And I'd like to ask the Consumer Advocate as well the same question.

MR. ALM: I think that -- I think our view is that we have -- that what was in the stipulation that set up the CT-1 commissioning and execution process was a series of steps.

The first step, of which, was to place it into operation and do the acceptance testing under petrodiesel in order to preserve the warranties and to make sure that we had a unit in service; and, then the next phases were supply to do the permitting because there is no biofuel air permit right now, then back, while we waited for the Department of Health to act, and then finally when the Department of Health came through with a biofuel air permit, from that moment on, that we had to operate the unit a hundred-percent of bio-diesel.

So, I guess, in our minds, assuming we're in good faith in that process of four steps, then it should be used and useful from the beginning.

CHAIRMAN CALIBOSO: I understand your primary theory of used and useful. I'm wondering if this is a viable issue here or is the Company not making this argument; if you're not making this argument, just say so?

MR. ALM: I think it's further evidenced that's used and useful. I'm not sure we're arguing that that should be the triggering need for that.

CHAIRMAN CALIBOSO: Okay, thank you.

Does the Consumer Advocate have an opinion on that?

MR. HERZ: I'm going to give you, from my perspective, in having participated in the CIP docket, and then also having participated in this rate case and the production modeling, including the use of the CT-1.

At the time the Company made its application for approval and spend money on the CIP combustion turbine, we, the Consumer Advocate, assessed that application on the basis of the need for additional generated capacity and then the type of capacity. And from our investigations and analysis, we concluded that there was a need and that this was the right type of unit to install and satisfy that deed.

So, at that point, we were not opposed to the project, but it was also at a time when there was a greater interest and greater focus on the state policy to move away from fossil fuels to renewable resources.

So what we advocated was that the unit -- and recommended was that the Commission approve the unit so that it could satisfy the reserve and reliability requirements of the Company; and, that then we also had a requirement that the unit burned biofuels.

So our focus, first, was that the unit satisfied reliability requirements; and, then sort of as a secondary matter that helped the State with meeting its renewable resource goals and we, as a catalyst, to test whether or not a unit could reliably operate on biofuels and provide the opportunity to serve in for investigations of whether other units ought to be burning biofuels; but, again, that was secondary to the need for the unit, which was that it was needed for reliability purposes.

So as we reached or went into settlement discussions with the Company, it was my understanding, personally, that the first thing was that the Company would start up and place the unit in a commercial operation based on burning fossil fuel; and, having met that, so that the unit was now available to meet reliability requirements which reviews as -- viewed as being very urgent at the time, we then would proceed into the process of testing the unit on biofuels and that those test results would serve two purposes.

One is it would be needed for the Company to modify its air permit and get permission to operate the unit; and, then, secondly, to understand what the fuel storage handling and the use of biofuel requirements would have on the unit.

And so, as I viewed paragraph 8 as the stipulation was being drafted, is that we are not yet to the point where paragraph 8 comes into play. And that paragraph 8 doesn't come into play until the unit is permitted to operate on bio-diesel, and we don't get to that point until the unit goes commercial, operates on diesel fuel; and, we now have a unit that's able to meet reliability requirements and then we'll go on to this next stage and see if it'll help us with meeting some of our renewable resource goals but not in the process to jeopardize the primary purpose of the unit.

And so then we get into the rate case here, the way we have modeled the rate case, is that the unit -- and this is modeling that took place, I think, was completed in February or March of this year -- we modeled the unit on diesel fuel for the months of August through November; and, then the assumption was it would take that period of time to go through some shakedown and to meet all the testing requirements and satisfy ones self that everything is up to spec.

And then from December 1st to the 14th, we had the unit operating on biofuels; and, then from the 15th on, the unit would be down for maintenance with the expectation that it would come back up the first of the year but it would come back up on diesel, and it would be using diesel until such time the Company was able to obtain a permit to operate the unit on bio-diesel; and, that everyone was satisfied that doing so would not affect the reliability of the unit. So it would be at those later stages that I viewed that paragraph 8 would come into play.

Now I don't know if those intentions or those expectations are worded as one would like to have them worded now at this particular time, but that was my -- that was my understanding or the goals that we were trying to achieve at the time.

CHAIRMAN CALIBOSO: All right. Thank you.

We're just trying to understand all the different possible theories that haven been mentioned.

So just to summarize this paragraph 8, in your view, does not even come into play, would not even come into play until you've already had your biofuel source and been operating it and the biofuel source would get interrupted?

MR. HERZ: That's correct. Because, you know, at the time there had been some experience in using biofuels for power generation, such experience was limited and not on an island system. And so we were concerned, first of all, about whether the units will operate safely and reliably on biofuels, but we were also concerned about where the fuel would come from; and, we had some comfort that there was a biofuel supply out there.

There is interest in biofuels worldwide, but there had been some studies done specifically for this island. It was viewed that their could, perhaps, be a source of biofuel from locally grown crops; and, so all of these were positive things but unproven. And, basically, while they helped us gain a comfort of a reasonable expectation that all of this could come to fruition, it was not yet in existence.

So we wanted to be sure we allowed for the contingency that some of these hopes and expectations didn't come into play but not ever in the process to detract from the purpose of the unit, which was to meet reliability requirements.

CHAIRMAN CALIBOSO: Thank you.

I believe Commission Kondo had a follow up.

COMMISSIONER KONDO: Mr. Herz, I agree with you that the stipulation is not written very clearly; and, so differently it could have been written much more clearer.

And I, actually, agree with or initially I intended to agree with your interpretation of paragraph 8 and you're also -- what you're stating to be your understanding that the unit would run on petroleum diesel until the permit had been modified to allow it to run on bio-diesel.

And the paragraph that supports that, is that paragraph 6, specifically paragraph 6-C?

MR. HEMPLING: Yes, yes.

COMMISSIONER KONDO: But, like I said, initially when I read this order, I would concur with your interpretation; yet, at the Imperium biofuel contract hearing, you know; and, like I said, it's not black and white, and I think you would agree that the stipulation is not absolutely clear that that is the intent, and that's unfortunate.

But at the biofuel contract hearing, you know, one of the witnesses for the Company specifically indicated the unit would be black until they had bio-diesel.

In fact, I'll read from the transcript.

By the decision of this Commission would require to operate CT-1 under biofuels, so we can do an acceptance testing without; and, after that, CT-1 is inoperable under current rule, your rule, for us to operate that without having biofuels available.

So that, to me, further -- it's from the transcript from the evidentiary hearing on the Imperium --

MR. HERZ: Mm-hmm.

COMMISSIONER KONDO: -- document; so, that statement by the Company certainly contradicted -- contradicts both your interpretation as well as my initial interpretation of the order and confirms, to me, that, perhaps, my understanding was different, which would be now, perhaps different from your understanding.

Do you have a comment about that?

MR. HERZ: Well, first of all, thank you.

And I wasn't aware of those statements in that docket, but I can assure you that in assisting the Consumer Advocate in evaluating the CT-1 docket, we would not have wanted the use of CT-1 to be restricted until such time that it was permitted to operate on biofuels and that it could only operate on biofuels; because, as I said, while we had reasonable expectations, those items could occur, we didn't know, but we did know that the Company needed additional generating capacity and that this was the type of capacity that best fit that need.

COMMISSIONER KONDO: Do you recall that intent of the Consumer Advocate to be articulated during the evidentiary hearing on the CT-1; and, specifically, what I'm talking about is the fact that, as you're saying the Consumer Advocate didn't want you to sit there without running, given the reliability needs of the system?

MR. HERZ: I'd have to check. I hope so, but I'd have to check.

COMMISSIONER KONDO: And the reason why I asked that is clearly the Commission had a different understanding both from the order, and it's confirmed by the Imperium order where the Commission reminded the Company of its obligation to run the unit on a hundred-percent bio-diesel; yet, I'm now hearing this argument, the Company never came back to seek clarification for reconsideration of the order; so, it further seems to confirm that, perhaps, your understanding of the stipulation is different from the Company. Comment?

MR. HERZ: It was not my understanding that the unit would be restricted to only using biofuel and would not be used to meet the needs of the system until then.

COMMISSIONER KONDO: Okay, thank you.

MR. ALM: Mr. Chairman, if I may.

CHAIRMAN CALIBOSO: Mr. Alm, do you have a response to the same?

MR. ALM: Yes.

CHAIRMAN CALIBOSO: Okay.

MR. ALM: What was just outlined is exactly what we agreed to; and, if there was any statement in any other hearing by any other witness or by anyone else, the testing that we're talking about is including the permit work through the Department of Health. Once we have a final permit back approved, then clearly it's a hundred-percent bio-diesel from that point forward.

But if we were dealing, as we were at the time, with a case of dire need, there is no way either the Consumer Advocate or we would have stipulated to essentially a turning off period of the unit for six months or so while the Department of Health decided what to do. You know, so clearly contemplated, and we had an original deal, and I agree the language couldn't -- could be more precise but it does specifically use the word "then" in 6(c) that it was a four-stage process.

It was a stage where we would turn it on with petrodiesel, get a test fuel supply and come up with the numbers to submit to the Department of Health, submit the application to the Department of Health and run it back so that we could continue to have it on the system because we needed it under the only fuel we had available without the permit change, which is petrodiesel, and then back on to bio-diesel when we see the permit.

And that was clearly the understanding of our Company because I was a negotiator, Darcy Iamoto was a negotiator, Cat Awakuni was a negotiator. I mean, we know what we agreed to and it was a four-step process.

COMMISSIONER KONDO: Well, why does the Company only site to us paragraph 8 in arguing that they can use or the Company can use different fuels, because I don't disagree with you. C seems to be -- 6(c)seems to be the paragraph. The only time I hear someone talking about 6(c) is Mr. Herz.

I only hear the Company talking about eight, and I agree that eight doesn't apply here; so, it also causes me some concern that, you know, maybe the intent is being changed as we move, and maybe that the target is moving.

MR. ALM: I certainly hope it isn't because that target has been clear to us since the day that we signed that stipulation in that agreement. The issue that we thought was raised and that we've indicated as our IR responses was that if the Imperium contract decision gave the Commission any doubts as to whether the biofuel supply existed that we had an intent to get and we could get our hands on it, that we move very aggressively to have the contracts.

You have one before you right now; and, the second one is on its way to you. There is no question that we are going to biofuel this unit. There's no question about fuel supplies exist. There's no question that we've committed to this because even before this hearing, we already expended the money to buy the test fuel supply. You know, if you want to the use the old analogy of Cortez and the boats, you know, we're committed.

COMMISSIONER KONDO: Why isn't the Company's argument here on the use and usefulness of the unit then, the fact that the Commission ordered, the CIP CT-1 order allowed the Commission -- sorry, the Company -- contemplated that the Company would run the unit on petrodiesel, petroleum diesel, so it would be putting power in the grid, would be fully dispatchable on a day-to-day basis running petroleum diesel.

Isn't that the Company's argument here, because I don't hear that argument? You know, we're talking about emergency use and stuff like that.

Shouldn't the Company come back and said, Hey, if you guys want us to run a hundred-percent bio-diesel, we'll do whatever you tell us; but, the order that you issued relating to the CIP docket allowed us to run petroleum diesel. We're not going to do that because you're telling us not to do that, but the order allowed us to do that, so it's used and useful?

So why isn't that the Company's argument here?

MR. ALM: I think it is. I think what we're saying is that the first stage of this process, which is step one of the four in the stipulation, is that we put it into service using petrodiesel and then it's used and useful at that point.

And then the second phase is the biofuel for testing. And as far as what eight means or doesn't mean, we put it in eight, in part, because there was some concern that we would not apply diligence to this process; and, if you'll note, the seven and eight are under the subheading Aggressive Implementation of the Process.

So we added a couple of statements in there that suggested the Company would do everything in its power to move towards it. And I do disagree. I think eight applies anytime during this process we run into a challenge; but I'm not -- we're not saying that the moment of that challenge is what declares it used and useful. In our view, it's used and useful when we launched down the four steps of the process, assuming that you believe we will complete all four steps in the process.

COMMISSIONER KONDO: Do you understand why it's suspect to me about the Company's position that six applies, because if you're saying eight applies, and he's saying it doesn't, he talks about six, you guys never talked about six.

MR. ALM: No, the only reason I raised eight was you asked about the specific instance of our coming to you for the right to use it now while we're in the gap, you said it should be between one and two.

COMMISSIONER KONDO: Mr. Herz is saying eight doesn't apply until the unit has been running on bio-diesel, that's what I understand him to be saying. He's not saying you come in here for emergency under eight.

I understand your --

MR. ALM: I guess what I'm saying is neither one of those, in my mind, to be used and useful. Question 8 is a different issue.

COMMISSIONER KONDO: Okay. All right. I

understand. Thank you.

CHAIRMAN CALIBOSO: Thank you, Mr. Hempling.

Do you want to continue or should we take our afternoon break?

MR. HEMPLING: I think I could -- if the witnesses are succinct, we could schedule to take a break at 3:15 and in 15 minutes I could cover property held for future use with respect to the CT-1 unit.

Which would you prefer?

CHAIRMAN CALIBOSO: Go ahead, Mr. Hempling.

MR. HEMPLING: So let's change theories, so that the Commission has full education, which is what it's getting to here about the possible theories.

Do each of the three Consumer Advocate witnesses have experience in their rate case careers with property held for future use?

Mr. Carver, do you?

MR. CARVER: Generally, yes.

MR. HEMPLING: Do you have, Mr. Herz?

MR. HERZ: Generally, no.

MR. HEMPLING: Mr. Brosch?

MR. YOUNG: Some limited.

MR. HEMPLING: Okay. Why don't you -- Mr. Brosch, let's start with you.

MR. BROSCH: Sure.

MR. HEMPLING: What do you view as the criteria for inclusion of rate based on grounds of property held for future use, just generally as a rate case expert?

MR. BROSCH: That account is actual pretty well describing a situation where you have an asset that does not qualify for plant and service classification on the books, because it's not currently in service and being used to serve utility customers; but, is, instead, an investment prudently made by the utility anticipating some defined future use.

And individual state jurisdictions are often about the task of interpreting in a very fact-specific way asset by asset, whether there's enough of a definitive future use to qualify each individual asset for that treatment; and, essentially, what the account provides for is an opportunity for the utility to include an asset in rate base that's not currently used and useful based on the equities of sometimes making good investments in advance or in quantities exceeding current need where efficiencies can result in long-term benefits to customers from doing so.

MR. HEMPLING: So the likelihood of future usefulness, likelihood is one of the criteria?

MR. BROSCH: Yes, sir. And the most common example is parcels of land where an opportunity emerges for a utility to acquire a parcel of land at reasonable costs where the expectation is that, perhaps, one day they will need to install or expand a substation or some other existing facility; and, the costs to acquire that parcel later would be higher such that it would be prudent to invest now for the long-term benefit of ratepayers.

MR. HEMPLING: Okay. So the likelihood is, one, a criterion and investment wisdom, prudence, reasonableness is a second criterion?

MR. BROSCH: That's been my experience, yes, sir.

MR. HEMPLING: And is there a third criterion remoteness in time; in other words, if you're going to get your plant rate base under the theory of property held for future use, you're saying you're going to use it not a hundred years from now, not fifty years from now, but is the length of time, the lapse in time before it comes useful a criterion for inclusion?

MR. BROSCH: It certainly can be and, I think, has been in some states.

MR. HEMPLING: Are there any other criterion besides likelihood, reasonableness of the costs, I guess, I'll use the word "immense" --

MR. BROSCH: Yeah, a plan.

MR. HEMPLING: -- anything else?

MR. BROSCH: No, that's it. That there be a plan for use.

MR. HEMPLING: Oh, a plan would be fourth.

MR. BROSCH: Yes. That's part of the story that comes with the asset being presented. The utility usually says we have, for instance, this parcel of land we acquired at cost X. It was prudent to do so because our plan used for this at some range of dates in the future is it reasonable to proceed now rather than miss that opportunity.

MR. HEMPLING: When a Company brings on major capacity, it often brings it on big lumps such that at the point in time that it first begins commercial operation, it had capacity well in excess of the need at the time, that's a familiar situation with large plans. Correct?

MR. BROSCH: Yes, capacity tends to come in a lumpy fashion.

MR. HEMPLING: Is the traditional -- is the appropriate regulatory treatment for this surplus capacity we're talking about prudence surplus capacity, is the property treatment of that plant held for future use or is the proper treatment of that used and useful because we can can't really do much about clumps?

MR. BROSCH: Probably, the latter. I've not seen a plant classified, in part, to plant held for future use. I have seen disputes where excess capacity was alleged and that debate can devolve to some partial allowance or some phase and treatment of the costs but none of those scenarios that I've seen involved plant held for future use.

MR. HEMPLING: If plant held for future use is a proper ratemaking treatment in a situation where a plant might not be ready for operation in the test year, why do the parties fuss about test year in the context of large plans?

Why don't parties just say we know it's going to be used within a couple of years. It doesn't matter which calendar year it's coming in, just credit in plant held for future use?

MR. BROSCH: You have a unique situation here, and Mr. Williams alluded to this previously where the revenue requirement in this case includes only the return on the CT-1 investment, and, in fact, the return on about half of the originally estimated costs of that investment, and not the depreciation.

The debate in other states is more interesting and there's more at stake because the normal accounting for a new capacity addition is the commencement of depreciation accruals when the plant is completed and deemed in service.

Here the convention used by the HECO companies that's been in effect for some time is to not commence the accrual of depreciation expense until the following calendar year; and, because of that practice, none of the depreciation expense for CT-1 is included in the revenue requirement at this time.

So that that causes the plant held for future use classification to have essentially the same effect revenue requirement-wise as plant in service.

(Whereupon, Mr. Hempling briefly confers with the Committee.)

MR. HEMPLING: Okay, thank you.

MR. BROSCH: Sure.

MR. HEMPLING: Anything y'all want to add about property health for future use, gentlemen on this side or the ladies on this side or are y'all satisfied with this explanation?

MR. WILLIAMS: I'm satisfied with the explanation.

The only other content of property held for future use is there's really an overriding regulatory determination here that it's useful for the utility to hold this property, and you take into account the varying circumstances and the risk of property because that can differ from property to property.

The other factor here is that basically you're saying it's not -- this property would not be used.

So the consequence of saying it's not used, we still incur the costs to man this unit. If it's going to be put in this category and then said we're not going to use it, then that should be a regulatory determination.

Right now, you've got the best of both worlds. The utility has this property. It's not best of both worlds for the utility, they're ultimately for customers, but this is the fact. The utility has this property. It's available for use by customers in emergencies, but there is no return on that investment.

The Company is manning the unit. It's not recovering the costs of manning the unit; so, you'd have to stop manning the unit from an economic and financial perspective.

MR. HEMPLING: Anything else on property held for future use?

MR. WILLIAMS: No.

MR. HEMPLING: What I'd like to do after the break is turning to the area of timing of recovery which we were just actually heading into.

I would like to ask the witnesses that will give the Commission a full understanding of the full range of options; so, it's not argument time, it's educating the Commission time as to all the various options.

So that will be the subject after the break and then following that will be the issue of cost levels and the appropriateness of the cost levels.

CHAIRMAN CALIBOSO: Let's take a 15-minute recess.

We'll reconvene at 3:25 p.m.

We're in recess.

(Whereupon, at 3:07 p.m., a recess was taken, and the proceedings resumed at 3:25 p.m., this same day.)

CHAIRMAN CALIBOSO: Good afternoon.

This hearing is reconvened.

We are continuing with the CT-1 panel.

Mr. Hempling, unless there's something we need to take of before we get started?

MR. WILLIAMS: Mr. Chairman, one follow-up item from that last discussion.

The Chair asked about the submittals regarding the emergency use of the CIP CT-1 project that consist of a September 16, 2009, letter from the Company, a September 30, 2009, letter from the Consumer Advocate, and an October 12th, 2009, letter from the Company all to the Commission. We'd like to put those on the record so that the record is clear.

COMMISSIONER KONDO: That'll be fine.

Would that be submitted as hearing exhibits or . . . ?

MR. WILLIAMS: We would mark those as hearing exhibits.

CHAIRMAN CALIBOSO: Any objections?

We need to get the Consumer Advocates copies of that in the order.

Any objections?

MR. ITOMURA: No objections.

MR. MCCORMICK: No objections from the DOD.

CHAIRMAN CALIBOSO: Thank you very much.
Anything else, Mr. Williams?

MR. WILLIAMS: That's all, Mr. Chairman.

CHAIRMAN CALIBOSO: Okay. Thank you.
Mr. Hempling?

MR. HEMPLING: Thank you, Mr. Chairman.

This second phase in the discussion of the CT-1 concerns the timing of the cost recovery and the goal here is to get on the table with clear explanations, all of the options that are available to the Commission.

The record talks about average rate base, it talks about step increases, it talks about second interim requests, and it may talk about even a few more things; so, I want to make sure that the Commissioners understand the options and the consequences of each these.

Is this an area you're familiar with, Mr. Brosch?

MR. BROSCH: I think so.

MR. HEMPLING: Okay.

MR. BROSCH: I hope so.

MR. HEMPLING: We'll start with you, okay. This is education time. This isn't argument time.

Don't run to your cellphones, but assume, for a moment, that the Commission wants the Company to have recovery of the CT-1 costs, we're not going to debate the total level at the moment.

MR. BROSCH: Okay.

MR. HEMPLING: And it wants it to have that recovery as soon as possible. Under those assumptions what are the methods available to the Commission at this time, given this schedule, this test year, this settlement?

MR. BROSCH: Well, it occurs to me that interim rates in infect, excluding cost recovery for CT-1, and the Commission could, if interested in expediting -- if interested in expediting cost recovery for CT-1 in the manner contemplated in our settlement, could issue an additional interim rate change that would put back the eliminated costs for CT-1, reflecting an increase in interim rates for that purpose.

MR. HEMPLING: Now, once it did that, then the interim rates is the full -- let's assume now the Commission said 193 million is the right number; and, I'm not suggesting that is what they're going to decide; but, so is that what they would put in the rates right now, the 193 or would they put in just your settlement number?

MR. BROSCH: What I had just indicated was that what would be included as a step increase would be the amount contemplated by our settlement number. The incremental revenue requirement associated with putting into rate base one-half of the estimated costs that was included in the settlement agreement for CT-1, which, I understand, was a lower number than the current estimated completed costs.

And, also, the related O&M expenses for a partial year for the unit, the staffing, and on labor costs to operate the unit for the last, I believe, it was five months of the test year was contemplated.

That step changed. That additional interim rate increase would not include depreciation expense because, as I said, depreciation accruals commenced in the calendar year following commercial operation under HECO accounting procedures; and that would be probably the most conservative form of accounting for the CT-1 revenue requirement; and, that's what it's appeal was in the settlement that we reached for the Company.

MR. HEMPLING: Okay. I think I may be the only one in the room that I've already fallen behind you. Let's go over this one more time. Suppose -- let's just use the 193 number and keep it simple.

By the way, when you used the "step increase," you used it interchangeably with second interim.

And what did you mean?

Are they synonyms or are they different?

MR. BROSCH: Let's call it a second interim to avoid confusion with a different Company proposal that was prefiled which was that their -- the Company's initial filing in this case was for there to be a step grade increase at the commercial operation date for CT-1 that would include the full annualized cost of the unit.

MR. HEMPLING: All right. Hold on. That's another option. That's why I want to keep them distinct in my mind, okay.

MR. BROSCH: I'm not talking about that full annualized step.

MR. HEMPLING: All right. I'm going to be in a minute --

MR. BROSCH: Okay.

MR. HEMPLING: -- because I want to get all the options on the table so Commission has a full menu.

So back to yours, again, because when you seem to equate step and second interim, I got a little lost so.

MR. BROSCH: Let me take the step out of it. A second interim --

MR. HEMPLING: Hold on, hold on.

Okay. So if the Commission wanted to get -- I'm not asking for what the Consumer Advocate sought. I'm asking if the Commission wanted to give the Company, as soon as possible, full cost recovery of the 193 million -- let's reask that question so I get as clear an answer as I can.

What would it do? Would the -- what would it do?

MR. BROSCH: If the Commission wanted to increase rates immediately to capture the full costs of the unit, including the 193 million contemplated final completion costs, that would require a revenue increase that exceeds the amount provided for in the settlement agreement?

MR. HEMPLING: No, I'm just asking you to describe what they would do. Forget about the settlement agreement.

What would the Commission do?

MR. BROSCH: If the intent were to annualize the costs to provide full recovery on all of the investment, rather than half the investment under our average test year convention, the calculation would look something like 193 million times the rate of return plus related income taxes all factored up for the revenue tax on the incremental revenues.

MR. HEMPLING: And that would go into effect on the day the Commission said it would go into effect, which would be the date of the order or sometime?

MR. BROSCH: I would assume so, yes.

And you would also add to that amount the full test year -- excuse me, the full annual O&M expense related to commercial operation of CT-1.

MR. HEMPLING: Right, stop right there for a minute. Would you mind -- let's put the expenses aside for a second.

MR. BROSCH: Okay.

MR. HEMPLING: Okay. If we're just looking at the full 193 million --

MR. BROSCH: Just the capital investment?

MR. HEMPLING: Yes, just look at that for a second. When you use the word "annualized" costs associated with the capital portion, is that what you mean when you talk about the full 193 as opposed to one-half of it?

MR. BROSCH: Yes, what I was trying to convey is that the normal convention for ratemaking here is an average rate base that's two point average, a beginning of the year and end of the year balance, and with an investment that comes into service part way through the test year, the default treatment is that it would be included in the end of the year balance but not the beginning of the year balance effectively having the return on investment that's allowed.

MR. HEMPLING: All right. But, once again, if under this hypothetical the Commission's intent was to get the Company full recovery as soon as possible it would be choosing the 193 figure --

MR. BROSCH: Yes.

MR. HEMPLING: -- which is what you call the annualized --

MR. BROSCH: Right --

MR. HEMPLING: -- rate base --

MR. BROSCH: -- or recovery --

MR. HEMPLING: -- is that correct?

MR. BROSCH: -- yes.

MR. HEMPLING: Okay.

MR. BROSCH: There would be no halving. It would be treated as if in rate base throughout the entire year.

MR. HEMPLING: Now that wouldn't constitute over recovery because it would not be going to effect retroactive to January 1st, '09, and be going into effect on the day the Commission said it was going to in effect.

It would not be over recovery, would it?

MR. BROSCH: It would not be over recovery in the sense that it would dovetail with the cessation of AFDUC.

AFDUC is a deferred return, an accounting return that terminates the commercial operation; and, at that point, the carrying costs of that entire investment become a burden to earnings the Company has to either earn that currently or suffer a loss.

MR. HEMPLING: Now when the Company refers to a step increase reflecting the full annualized costs of the CT-1 unit, is that what they're referring to, this putting the 193 million in rate base now, meaning when the Commission issues its order?

Is that what they're referring to as you understand it?

MR. BROSCH: Yes, except when that proposal was made in the Company's initial filing. I don't think the numbers were as large as 193 million --

MR. HEMPLING: I understand that.

MR. BROSCH: -- but, yes, a full annualized expense recovery and a complete return on all rather than half of the investment.

MR. HEMPLING: All right. And now still with this concept what words do we want to use to describe this concept, full annualized recovery?

MR. BROSCH: Why don't we say annualized full recovery?

MR. HEMPLING: Okay. Just so we have the words associated --

MR. BROSCH: Yeah, let's put that label on it.

MR. HEMPLING: All right. Now with respect to expenses, again, if the Commission wanted to allow full and immediate recovery of expenses associated with the unit but not costs over recovery, meaning not pay for expenses over a period of time that's longer than the period of time in which the expenses were incurred, what would the Commission do?

MR. BROSCH: The Commission would include the full annual estimated O&M expense in the revenue requirement and would need to factor up those expenses for the related revenue taxes to design the revenues that would on net recover the appropriate amount of expense.

MR. HEMPLING: But, once again, because this increase wouldn't be going into effect retroactive until January 1st but would only be going into effect as of the date of the Commission order, we would not be paying for expenses that were not incurred?

MR. BROSCH: That's right, the new rates would be in effect prospectively --

MR. HEMPLING: Right.

MR. BROSCH: -- at the same time the new expenses are being incurred and recorded prospectively.

MR. HEMPLING: Now the approach that you and I were just describing is the approach that the Company proposed in its initial testimony?

MR. BROSCH: Yes, as a separate step increase.

MR. HEMPLING: Separate from?

MR. BROSCH: From an interim that was assumed to go in effect potentially earlier than the commercial operation of CT-1 --

MR. HEMPLING: Why does --

MR. BROSCH: -- and separate --

MR. HEMPLING: Sorry.

MR. BROSCH: -- the ultimate final revenue increase when the Commission issued its final order.

MR. HEMPLING: And you, as a witness, which is what I'm talking to you about. I'm not talking to you as an advocate for the Consumer Advocate. I'm talking to you as an expert witness.

You objected to that approach?

MR. BROSCH: That's correct.

MR. HEMPLING: On what basis?

MR. BROSCH: I'm going to defer to Mr. Carver. He sponsored that --

MR. HEMPLING: All right.

MR. BROSCH: -- testimony relative --

MR. HEMPLING: Specifically, what was your objection to this approach?

MR. CARVER: With regard to the overall view of a test year and looking at an average test year, as this Commission has used for many years, we have a problem with the isolation of a single element in this case 193-million-dollar investment in CT-1 under your example and providing rate relief of the full annual effect on a step increase.

MR. HEMPLING: I know you had a problem with it. I'm asking you what your reason was.

MR. CARVER: Well, it violates the average test year approach. We're no longer synchronizing and annualizing all elements of revenue requirement. We have an annualized revenue effects. I know we don't have revenue growth here; but, in some cases, we do. That would be overlooked through that step increase approach. We may have changing expense levels, some go up; some go down, that were leaving a test-year average.

If we're going to move to what I consider to be an end of period rate base approach, which is what the step increase effectively does for that isolated element, then why are we doing it for the entire costs of service, the entire revenue requirement?

We no longer have this average matching approach.

MR. HEMPLING: The argument you described is an argument based on the theory of synchronization of all costs and revenues in a test-year context?

MR. BROSCH: Yes, that's correct.

MR. HEMPLING: It's based on a theory.

Was there some facts about the Company that made you feel that, in practice, taking the annualization approach would cause an actual inconsistency or asymmetry or lack of synchronization, was there something factual or was it purely a theoretical objection?

MR. BROSCH: For this case, it was a theoretical objection in prior cases. I believe there were -- there might have been testimony by either Mr. Brosch or myself addressing that issue when we felt that there were distortions in the test-year calculation of revenue requirements; but, we didn't do that type of testimony here and the Company agreed with us not to implement a step increase --

MR. HEMPLING: I see.

MR. BROSCH: -- so we did not develop a laundry list of the various inconsistencies that could arise in the immediate case.

MR. HEMPLING: My question, your competence, the bottomline is you didn't -- you don't have and didn't have evidence that annualization would cause a distortion of the relationship within costs and revenues?

MR. BROSCH: We did not go through that exercise in this case to detail about the items that would be inconsistent and estimate --

MR. HEMPLING: All right.

MR. BROSCH: -- the effects thereof.

MR. HEMPLING: Is there ever an argument that a to-be-rate-based item is so large that allowing a deviation from the traditional synchronization is appropriate?

First, Mr. Carver; then, Mr. Brosch.

MR. BROSCH: Well, there's certainly an argument that can be raised in that regard.

MR. HEMPLING: I'm sorry, people can always argue.

Is there ever a policy justification for in the context of a large to-be-rate-based item relaxing the insistence on synchronization?

MR. CARVER: Well, yes, there is. Most of the jurisdictions that we operate on use a historic end-of-period-test year with no measurable changes subsequent to the end of that historic period. In those environments, it's typical to reflect the full investment in a new generating asset, whether it's a combustion turbine or a nuclear power plant in that end-of-period-rate base, but we have annualizations of all components.

I don't believe theoretically that that approach is appropriate to overlay an end-of-period-rate-based treatment of a single item with an average test year approach unless there's a matter of severe and dire financial harm that would result as a consequence.

MR. HEMPLING: Okay, that's what I want to focus on for a moment. In fact, are you aware -- are you aware of a Hawaii commission case, or other cases, where the company's financial condition was cited as a justification for allowing on an annualized basis the rate basing of an item?

MR. CARVER: Not in an average, test-year approach. I have seen situations where nuclear power plants were placed in service. The effect was so significant on the Company that instead of -- and because of the inability to time great relief with the in-service date of the generating unit, the company was allowed to capitalize post, in-service AFDUC and defer depreciation and O&M costs until the commission can issue a rate order in order to mitigate those dire financial consequences but --

MR. HEMPLING: But that's different. That's not --

MR. CARVER: That's much --

MR. HEMPLING: -- laying something in the rate base. That's letting AFDUC build up and getting around to the costs recovery later. Correct?

MR. CARVER: Yes. But it's to mitigate dire financial consequences.

MR. HEMPLING: Okay. Let's turn to a second approach.

Mr. Brosch, the approach that -- again, assuming 193, without arguing about the total, the approach that your settlement anticipates is different from the annualized approach. Correct?

MR. BROSCH: Yes, it is.

MR. HEMPLING: It's not intended to leave the Company in an under-recovery situation ultimately, is it?

MR. BROSCH: No. Let me describe it this way.

The approach contemplated in the settlement would, as I said, use a smaller agreed upon number for the costs would effectively have it by including it only in the period rate base and would apply a return with related income taxes to it factored up for the related revenue taxes and include recovery of O&M expenses for, I believe, five of the twelve months of the test year contemplating that the unit would have been in service for that fraction of the year; and, then in the event the Commission approves the decoupling RAM's provision, there would be a calculation of a RAM incremental revenue requirement next year that would effectively capture in the beginning of the year rate base for that 2-point-rate-base RAM calculation.

The costs of the unit, I believe that proposal, and we can look across the room and seek confirmation, I believe that proposal was eventually amended to include only the GO-7 approved level of costs for major projects such as CT-1 in the recovery. We certainly talked about that.

MR. HEMPLING: So the RAM recovery would recover both the half of the unit that wasn't being recovered because of the use of the average rate base and would also recover any increment from the settlement number up to the ultimate Commission approved number; is that correct?

MR. BROSCH: As I recall the modifications to the RAM, the amount included in the beginning RAM rate base would be the per-book costs of CT-1 limited to the GO-7 approved amount for major capital projects.

MR. HEMPLING: Well, inasmuch as what you think the RAM is going to be and what the Commission decides the RAM is going to be are two different things or possibly two different things.

Let me ask it to you this way, Assuming the Commission were to take the approach of average rate base plus RAM --

MR. BROSCH: Yes.

MR. HEMPLING: -- under decoupling and assuming the Commission intended to give the Company recovery and return on the entire 193 --

MR. BROSCH: Okay.

MR. HEMPLING: -- under those two assumptions, the solution would be to accept the settlement, which is an average rate base concept with the amount being whatever the -- was it 168 --

MR. BROSCH: Yes.

MR. HEMPLING: -- 168 so the Commission --

MR. WILLIAMS: 163.

MR. HEMPLING: 163, thank you.

-- so the Commission would do that; and, then in the decoupling proceeding would write the RAM such as to allow for the recovery of the half plus the difference between the 163 and the 193; is that correct?

MR. BROSCH: Yeah, that could be done, yes, sir.

MR. HEMPLING: And that approach would get the Company full recovery of its costs or would there be a gap relative to the annualized approach we were discussing first?

MR. BROSCH: Well, that would accomplish most of it, if I track with your question completely. I think there may still be a bit of a gap in that the O&M expense at the five-month level, for RAM purposes, would factor up with the

GDPPI and wage rate less productively multipliers, but you would be starting from an approved O&M base that included owing five months of O&M for CT-1; so, there would be conceivably a gap there.

MR. HEMPLING: But in terms of the capital costs itself, there would be no gap?

MR. BROSCH: There would be no gap commencing with the new RAM year if you put the full 193 cost into the beginning and end-of-year rate rates and a lot of return on it; and, also for RAM purposes, the depreciation would be recovered through the RAM in the next year.

MR. HEMPLING: And the AFDUC that the Company is accumulating now or has been accumulating would that also have to go into the RAM; or, did I just misstate something?

MR. BROSCH: The AFDUC, I presume, is in the 193 number; so, it would become effectively part of the rate base, and the Company would earn a return on it upon inclusion rate base.

MR. HEMPLING: All right. So far, Mr. Brosch, we've talked about two ways to get the Company full recovery of, in this assumed case, 193 million-dollar investment, is that your understanding of what we've done so far?

MR. BROSCH: Yes, I think we've labeled alternative one full annualization and maybe we could label alternative two as stipulation plus actual cost increases.

MR. HEMPLING: Okay. A third option that has been suggested is a second interim rate increase. Correct?

MR. BROSCH: You lost me just now. I think I had that in mind when we were talking about full annualization.

MR. HEMPLING: Okay. Well, that gets back to this question whether a step increase and a second interim or the same things are different.

Is there some third option here; or, do you understand or would you think those are synonyms, because I understood the Company to separate them out as second interim and then a step increase?

MR. BROSCH: Okay. All right. Let me try it this way.

MR. HEMPLING: Thank you.

MR. BROSCH: The Company's proposed step in the initial financial filing was full annualization. When I first started speaking of what could be done in the alternative, it would be a hybrid that would contemplate a second interim increase that would increase revenue collections based upon the stipulation; so, it would be a calculation not using the larger cost increase; but, instead, the stipulated revenue increase between the Company and the Consumer Advocate effectively not providing rate recovery immediately for the cost exceeding what was proposed in the Company's filing in this case.

COMMISSIONER KONDO: Isn't the second interim just a mechanism to get recovery going sooner than later --

MR. HEMPLING: Yes.

COMMISSIONER KONDO: -- for the final order; so, it could be Option 1 or Option 2 in terms of the full recovery for the average test year recovery, but the second interim is just the mechanism to start the recovery clock earlier than the final order; is that correct?

MR. BROSCH: That's what I had in mind.

And, the distinction I'm trying to draw is in how we calculate what happens with that incremental revenue requirement. It could be annualized or it could be halved as contemplated in the stipulation, and it could the full 193 or it could be limited to the capital costs the Company asked for in its filing.

COMMISSIONER KONDO: So it's really not Option 3. It's just really a mechanism to implement to Option 1 or 2?

MR. BROSCH: Yes, it's a nuancing of how you calculate the number.

COMMISSIONER KONDO: All right. Thank you.

MR. HEMPLING: This is very helpful so far, Mr. Brosch, so you're on a run here.

Do you like this so far, gentlemen, ladies?

Now, Mr. Brosch is there -- assuming, again, only for purposes of argument, the Commission desired to get full recovery as soon as possible, is there any other option that you're aware of?

MR. BROSCH: There are options that are noncash in nature that would potentially protect the Company's earnings while not increasing rates as soon.

MR. HEMPLING: And would you describe those?

MR. BROSCH: One might be to grant some accounting authority for the Company to continue the accrual of some carrying charges that might be called post, in-service AFDUC in a deferred asset, a regulatory asset account, that would then be later includable in rate base.

MR. HEMPLING: At some time when the Company filed another rate case?

MR. BROSCH: Yes, and/or within the context of RAM, but the RAM, as presented, does not contemplate inclusion of regulatory assets, so that would be a modification.

MR. HEMPLING: Can I stop you right there then?

Understand the potential awkwardness for the Commission right now. It has this case pending and it has the decoupling case pending, and it hasn't made a decision about decoupling; so, there's a difficulty for the Commission to accept your settlement in the way that you phrased it, if the Commission has not yet a made a decision of whether there's ever going to be a RAM.

You understand that awkwardness?

MR. BROSCH: I understand we have plenty of moving parts here, yes.

MR. HEMPLING: And it's just those two. And that's the reason, in part, for this line of questions right now --

MR. BROSCH: Yes.

MR. HEMPLING: -- is to make sure the Commission has a set of options that don't --

MR. BROSCH: Yes.

MR. HEMPLING: -- include -- do you understand where I am?

MR. BROSCH: Yes. And with that in mind, this post, in-service AFDUC could be approved for a period that commenced with your order and even conceivably might be retroactive to the commercial operation date, the one the AFDUC sees.

MR. HEMPLING: Well, excuse me. And if the Commission, again wanted full recovery, didn't want to have the Company penalized because of gaps and times between the in-service date and the Commission order, it's that last phrase of yours that it would need to do. Correct?

MR. BROSCH: Yes, for full earnings protection of the returned component, that would require a retroactive effective date too. I believe I heard August 3rd.

MR. HEMPLING: Do have you some problem with that idea?

MR. BROSCH: Not if you don't.

(Laughter.)

MR. BROSCH: We're discussing options.

MR. HEMPLING: Okay. So right now, again, thinking about this from the Commission's perspective, if the Commission didn't want to lock itself into a decoupling proposal at the time that it was deciding a rate case, the two options that it has is first annualization, which is the first thing we discussed; and, secondly, it would be this third option we just discussed, which is what you called their earnings protection approach, which is the grant accounting authority to create a deferred asset that included post, in-service AFDUC.

MR. BROSCH: That would take care of the return element. That would get you to the beginning of the next calendar year.

MR. HEMPLING: Excuse me. And, then, at that point, the Commission would have the option of doing decoupling and RAM or the option of saying to the Company, when you get around to filing your next rate case, you'll be able to seek recovery of this deferred asset; is that correct?

MR. BROSCH: All true, except recall that at the beginning of the next calendar, depreciation accruals commence, which would represent another earnings hit to the Company.

MR. HEMPLING: Unless they're filing for a rate case right then and there?

MR. BROSCH: And could have rates effective to recover depreciation right then and there, yes.

MR. HEMPLING: Okay. So that is an awkwardness associated with your third option?

MR. BROSCH: It's an awkwardness that occurs if RAM does not occur and provide for depreciation recovery, yes.

COMMISSIONER KONDO: Under your first option, you still wouldn't get depreciation expense during you next calendar year. Correct?

MR. BROSCH: My first -- are we going back to the cash annualization scenario?

COMMISSIONER KONDO: The annualization full recovery scenario.

MR. BROSCH: Yes, the annualization full recovery scenario, that I described, would provide the return in an incremental interim; and, then, if there were no RAM, would need to make some provision for recovery of depreciation commencing January 1, either through another increase or yet another regulatory asset that we could call "deferred depreciation accounting" that would stack up more regulatory asset revenue entitlement for the Company to accumulate until there were an opportunity for cash rate relief, either by a RAM or a next rate case.

And with those two pieces of regulatory asset, we've addressed the return on and return of, but we still haven't talked much about the O&M expense.

MR. HEMPLING: Okay. We're still going to stick with the capital costs right now.

When we've been using the word "regulatory asset" in this conversation, let me distinguish what I understand to be two types of regulatory assets.

One is merely an opportunity to argue later for cost recovery without being accused of seeking retroactive rates; and, the other is a real regulatory promise, you can have this when you ask for it.

Does the term "regulatory asset" get used to describe both types of situations?

MR. BROSCH: More than the latter than the former.

The auditors would require that there be a probability of future recovery to avoid a requirement that the Company expense those costs for financial reporting purposes; so, there would need to be some relatively strong assurance that those assets, in fact, exist and will ultimately be recoverable through rates.

MR. HEMPLING: The Commission would need to say something to distinguish it from the type of regulatory asset which simply is an opportunity to argue later, an exhibition intended to have the Company look to the financial community like it was going to receive the full amount.

MR. BROSCH: I would think so, yes, sir.

MR. HEMPLING: Excuse me a minute.

Are there any other options in your mind Mr. Brosch, again, under the hypothetical that the Commission intends full recovery of the capital costs?

MR. BROSCH: Well, again, we've talked about the capital costs and not the O&M; but, if we continue to set the O&M aside, I've described what occurs to me as the cash remedies and the earnings remedies that might be in the toolbox.

MR. HEMPLING: Okay. Could I ask the -- I guess it would be Ms. Tekimora (sic). You've been following these three options that Mr. Brosch and I have discussed?

MS. SEKIMURA: Yes.

MR. HEMPLING: Okay. Again, without fighting the hypothetical, and I'm not sure you would, because the hypothetical is full recoveries, could you assess for the Commission the pros and the cons of each one from the perspective of the financial community?

Do you have a preference among the three and can you explain why?

MS. SEKIMURA: Sure. Let me get my notes here.

In terms of the two options that we covered on the full annualization and the stipulation and the annual cost increases, that would allow for a full cost recovery and we demonstrate the Company's ability to earn a return on the investment.

MR. HEMPLING: Excuse me. The second option, what do you call it?

The second option is the settlement approach plus the RAM recovery. Correct?

MS. SEKIMURA: That's correct.

MR. HEMPLING: All right. Go ahead, please.

MS. SEKIMURA: It would help to maintain our financial integrity.

MR. HEMPLING: Are you indifferent between those two?

MS. SEKIMURA: I like both options.

MR. HEMPLING: Are you indifferent between the two?

MS. SEKIMURA: Yes.

MR. HEMPLING: Why isn't the full annualization a quicker and more --

MS. SEKIMURA: I'm sorry, I'm sorry. The full annualization of the 193 is the preference over the step increase.

MR. HEMPLING: Because it's sooner and more certain?

MS. SEKIMURA: That's correct.

MR. HEMPLING: How big is the preference?

I mean, can you -- I guess I'm going to ask you really specifically as you can help but I know Wall Street likes money sooner rather than later, but is this a difference that the Commission needs to be concerned about if it was comparing the first two options?

MS. SEKIMURA: I think it's consideration before the Commission. In addition to on the financial integrity aspect of the recovery, it sent a very extremely important message to the financial community in terms of the support that the Commission has for a needed investment that was previously approved by the Commission.

MR. HEMPLING: I think I can figure all that out myself even as a nonfinancial person.

Is there any quantification of the difference you can offer?

MS. SEKIMURA: Different --

MR. HEMPLING: For quantification in terms of is there going to be some ratings effect or cost of capital effects that's different between these first two options?

Do you know?

If you don't, it's okay.

MS. SEKIMURA: I would say, in speaking with the rating agencies, a mechanism that recovers much more quickly and brings in cash much more quickly as well is something that is very favorable to credit quality and something that the credit rating agencies favor.

MR. HEMPLING: I think everybody knows that, but is the answer that it's not possible to quantify this difference in terms of capital costs?

MS. SEKIMURA: In terms of -- I can quantify it in terms of what it means in terms of revenues.

MR. HEMPLING: Well the revenues are going to be the same ultimately, right, that's what the whole point of this is.

I think the answer is you're not going to be able to go -- you're not going to able to offer the Commission a specific increment of reduction in the Company's borrowing costs in comparing the first two options. It's just not possible to quantify it right now. Correct?

MS. SEKIMURA: That's correct.

MR. HEMPLING: But it's a difference?

MS. SEKIMURA: That's correct.

MR. HEMPLING: Okay. Now what about the third one?

You like the first one better than the second one, you like the second one better than the third one, the third one is the protecting earnings approach, which is you'll get money at some point later either through a RAM to be determined or through some rate case you filed for later, that's the third option.

Do you recall that?

MS. SEKIMURA: Correct.

MR. HEMPLING: So how does that feel to you?

MS. SEKIMURA: Would you repeat the third option again?

MR. HEMPLING: Mr. Brosch, would you repeat that third option again --

MS. SEKIMURA: To be sure I understand.

MR. HEMPLING: -- just to be sure she understands it?

MR. BROSCH: Yes. I characterized it as noncash earnings protection in the form of a regulatory asset that would account for effectively post, in-service AFDUC; and, then potentially a second regulatory asset that would defer for future recovery the depreciation accruals that commence at the beginning of the next calendar year so as to avoid burdening earnings with the lost of return on and then return of the investment.

MS. SEKIMURA: From the rating agency's standpoint, that does not bring in cash as soon as the first two options; so, that's one of the financial metrics that they do look at.

MR. HEMPLING: Which is your coverage. It's the amount of cash you have relative to your borrowing obligations?

MS. SEKIMURA: That's correct.

MR. HEMPLING: So cash makes a difference?

MS. SEKIMURA: That's right.

MR. HEMPLING: Is this amount of cash that's big enough to make a difference?

MS. SEKIMURA: I would say, yes, it is.

The other point I do want to make in terms of the credit rating agencies view of the support of the recovery of our investments. One possible action by the rating agencies could lead to a downgrade and that would increase our overall cost of capital which, in turn, ultimately results in higher rates to our customers.

MR. HEMPLING: Well, any one of these three is better than the status quo; so, you're not going to get a downgrade for any one of these things. Right?

MS. SEKIMURA: I would hope not.

MR. HEMPLING: Well, if you did, it wouldn't be our fault.

COMMISSIONER KONDO: If that's a true statement that Mr. Hempling said, Option No. 3 is better than what's been proposed in the settlement assuming they'll be decoupling. Correct?

MS. SEKIMURA: Option 3, I guess, I would have to say I would also question the total overall costs of the project because these costs would continue to accrue and would add to the total project costs.

MR. HEMPLING: I think I can restate his question.

I mean, again, if we'd just stick with the 193 million; but, if the Commission were simply to accept the settlement but say there's no decoupling, you'd be back in for a rate increase real soon to get the rest of the other half of the rate base. Correct?

MS. SEKIMURA: That's correct.

COMMISSIONER KONDO: Well, Option 3 is better than that scenario. Correct?

MS. SEKIMURA: That's correct.

COMMISSIONER KONDO: Thank you.

MR. HEMPLING: Excuse me a second.

Do you have any other options in mind, Ms. Tekimura (sic), besides the three that Mr. Brosch has described for how to get full recovery?

MS. SEKIMURA: No, I think he covered the option.

MR. HEMPLING: Okay. That was my first purpose was to make sure the Commission understood what his options were and from you what the hierarchy was in terms of desirability.

Now the settlement, I'm not sure who gets this directed. I guess Mr. Alm could you negotiate the settlement, correct, in this case; so, we're part of the team to negotiate the settlement in the rate case?

MR. ALM: CT in the rate case?

MR. HEMPLING: Yes, sir, this case.

MR. ALM: I had a hand on a number of positions.

MR. HEMPLING: Okay. The --

MR. ALM: The financial issues here.

Why don't you ask me a question about it?

MR. HEMPLING: The settlement doesn't deal with three options. The settlement just deals with one option, which was the second option. Correct?

MR. ALM: Right.

MR. HEMPLING: So if the Commission; again, hypothetically, if the Commission were going to choose an option other than the settlement option; meaning, either Option 1 or Option 3, it's on its own because there's no testimony to support it, is that your understanding; or, is the better answer that there's plenty of testimony that support annualization, it's your Company's testimony in this direct case?

MR. ALM: Well, clearly, if you're just leaving it up to us, that's the answer from my direct case. You know, I mean, you're doing all of this hypothetically. As we said, you know, it was a settlement agreement and that means all kinds of issues got put into the mix and, you know, we accepted the outcome we did and return for other outcomes being accepted; so, you know, if you're looking at the settlement agreement, it's tough to unpackage that.

MR. HEMPLING: All right. You understand --

MR. ALM: But, I mean, you separated out the settlement agreement and just said hypothetically took three different recoveries, you know, a rate from a to z. I mean, we rated them -- we can rate them -- Consumer Advocate but our settlement agreement wasn't the totality of consideration.

MR. HEMPLING: Do you have any recommendation for the Commission, in light of the fact that it hasn't made a decision in the decoupling case yet; but, perhaps, would like to make a decision in this case to get clarity to your financial situation, any recommendation to the Commission, given where your settlement places it?

MR. ALM: Given the things that have been outlined today, I don't specifically, but we could before the end of this case.

COMMISSIONER KONDO: Could you repeat your answer? I'm sorry, I missed that.

MR. ALM: You're posing the hypothetical that --

COMMISSIONER KONDO: I just didn't hear you, Mr. Alm.

MR. ALM: Okay.

COMMISSIONER KONDO: I don't need you to explain it. I just didn't hear you. Sorry.

MR. ALM: I don't at this moment. If you're trying to come up with a scenario that does not -- that tries to leave you room to have any decision you want in decoupling; and, so Mr. Hempling asked if I have a recommendation to the

Commission, if we take decoupling out of the picture, and I said I don't right now with an attempt to do so, we could have one by the end of this proceeding.

COMMISSIONER KONDO: Well, thank you. I just didn't hear --

MR. ALM: Right.

COMMISSIONER KONDO: -- your answer --

MR. ALM: Right.

COMMISSIONER KONDO: -- so I was just asking you to repeat your answer. Thank you.

MR. HEMPLING: Did I see somewhere, Ms. Tekimura (sic) a suggestion from the Company that a fourth option would be to recover the CT-1 costs through a surcharge?

Did I see that in your testimony somewhere or am I confusing it with something else, not yours necessarily, but the Company's testimony?

CHAIRMAN CALIBOSO: Mr. Hempling, I think you're referring to Ms. Sekimura.

MR. HEMPLING: I'm sorry. Yes. What did I say?

MS. SEKIMURA: I don't recall seeing that.

MR. HEMPLING: Okay. So that's not one of the options is to recover -- is to create a separate surcharge for CT-1 recovery?

MS. SEKIMURA: That's correct.

MR. HEMPLING: Okay. Okay. Those are all the questions I have on this issue of the timing of recovery, unless there are Commissioner questions on this matter.

Okay. So the third part of the discussion of the CT-1 plan is the level of dollars.

MR. ISLER: Robert Isler.

MR. HEMPLING: Welcome, Mr. Isler.

Is that how you pronounce it?

MR. ISLER: Yes.

MR. HEMPLING: And what's your position with the Company?

MR. ISLER: I'm the project manager and project manager in charge of CIP CT-1.

MR. HEMPLING: So you're the fellow that caused all the $193 million?

(Laughter.)

MR. ISLER: I was involved with the project estimate and the final process.

MR. HEMPLING: Okay. These are some random questions. There's no particular pattern to them. I want to get some clarification on some cost items?

MR. ISLER: Okay.

MR. HEMPLING: Okay. There's an exhibit. It's S-17A01.

Is that yours?

MR. ISLER: Yes, it is.

MR. HEMPLING: It's a -- did I identify it correctly?

It's S-1710101?

MR. ISLER: Yes.

MR. HEMPLING: Okay. So will you describe this quickly for the record?

What is this?

MR. ISLER: This exhibit is a compilation of the costs for all the different components of this project and a comparison of what was in the original docket versus what we estimated as the final costs now.

MR. HEMPLING: Okay. Down at the very bottom the total, the total, the estimate, the column entitled 7/12/09 and the bottom row, which is called total, it says $169,850,127.

MR. ISLER: I'm sorry, which page are you looking at?

MR. HEMPLING: Well, at -- I'm sorry too. How about page 3 of 11?

MR. ISLER: Oh, okay.

MR. HEMPLING: And I'm just looking at what's called the bottomline. The total cost estimate as of 7/12/09 is $169,850,127.

MR. ISLER: Yeah, that's the estimate for just the component that is the new generating facility.

MR. HEMPLING: Right. So 193 million covers the remaining costs?

MR. ISLER: Correct, the 193 includes all the other costs, including the 1.8 million per property held and future use.

MR. HEMPLING: Okay.

COMMISSIONER KONDO: Can I clarify that, Mr. Isler?

MR. ISLER: Yes.

COMMISSIONER KONDO: My understanding was the 193 is additional costs to the generating unit itself that were incurred or estimated after the time that you did the interim.

Is that incorrect?

Is it additional assets that are included between the 169 and the 193?

Are there additional assets or it's still just the CIP generating unit?

MR. ISLER: It's still all the same components that were included in the original docket for this project.

COMMISSIONER KONDO: Okay. I think I misunderstood you answer to Mr. Hempling.

But the difference between the 169 and 193 is what?

MR. ISLER: There are differences for each of the components. There are differences in material and equipment costs, there are differences in construction costs for the various components.

COMMISSIONER KONDO: Okay. Maybe I'm struggling to understand what the numbers are.

My understanding from subsequent filings has been that the estimated total costs of the unit is about 193 million 100,000 or something to that effect; but, my understanding was for purposes of the rate case, the number that was being used by the Company and the Consumer Advocate was this number 169, is that not correct?

I see Mr. Williams shaking his head; so, it must not be correct.

MR. WILLIAMS: Yeah, we're confusing the 169 with the number that's the project costs for the rate, which is 163 --

COMMISSIONER KONDO: Okay.

MR. WILLIAMS: -- million.

COMMISSIONER KONDO: I stand corrected. I see that. Thank you.

I'm sorry, Mr. Hempling.

MR. HEMPLING: But the 169 is not 193 because there are items that are not included on this particular exhibit. Right?

That's what I thought your answer to my question was.

MR. ISLER: Let me get some clarification so I can try to answer this correctly. I'm not sure what the 169 is.

MR. HEMPLING: Well, it's your chart.

Can you tell us what it is?

MR. ISLER: Oh, the 169 that you're referring to that if it's on this page, is the current estimate for just the component that is the general facility.

MR. HEMPLING: Exactly what I understood you to say. Yeah, okay. Why don't we just leave it there --

MR. ISLER: Okay.

MR. HEMPLING: -- for now, because that's not even why I'm asking these questions. I just want to get the --

MR. ISLER: Okay.

MR. HEMPLING: -- chart clear.

Okay. Ready?

MR. ISLER: Yes.

MR. HEMPLING: Okay. You see about six lines from the bottom there's a line item called HDCC-GA in profit. Right?

MR. ISLER: Yes.

MR. HEMPLING: And what do those letters all stand for?

MR. ISLER: Okay. So HDCC stands for Hawaiian Dredging Construction Company, who is the general contractor for the generating facility component.

MR. HEMPLING: Right. And so what we have here is estimated project costs for the rate case of 5.279 million and then an estimate as of 7/12/09 of 7.132 million. Correct?

MR. ISLER: That's correct.

MR. HEMPLING: Okay. And I just want to understand the reasons for that difference.

MR. ISLER: Well, the primary reason is that generally the markup of the G&A's and profit from the construction company is a percentage of the costs of the work to do. When we did the estimate, the original estimate, we had a certain dollar amount for construction; and, along with that, came a certain estimate for what their markup would be.

MR. HEMPLING: And that would be that certain estimate you just referred to would be the 5.279 million?

MR. ISLER: That's correct.

MR. HEMPLING: So you're saying that the growth in the line item is essentially pro rata to the growth in total costs?

MR. ISLER: It is related to it, yes.

MR. HEMPLING: It's not pro rata?

MR. ISLER: I'm not exactly sure what you by that.

MR. HEMPLING: Well, what do you mean by "related to"?

MR. ISLER: When we did the original estimate, how much profit in G&A the contractor would add, we may have assumed a different formula or different factors than what were actually used by the construction contractor that we picked; so, they may not be the exact same percentages but the same concept of taking a percentage of the total amount of construction and adding that in for G&A in profit.

MR. HEMPLING: Well, there are then, actually, two possible -- two explanations simultaneously for this growth in this number. One is that the contractor you ended up choosing used a formula that varied from what you assumed, and the total project costs grew such that the G&A profit grows with it.

Are both of those factors evident here?

MR. ISLER: Yes.

MR. HEMPLING: Okay. So to a total layperson, like me, looking at this would wonder how is this possible that as you get cost overruns relative to budget, somebody profits more from it, that's obviously an ignorant statement by a lawyer, why don't you clean it up for me.

MR. ISLER: Well, there's a big difference between what the -- you know, us taking an estimate and estimating how much the project is going to cost and how much a contract is going to include for a G&A profit versus when you go in for the actual -- with the actual construction drawings and you ask someone for a bid, and they give you a price for that construction, if what they're saying is that this is going to costs more to construct due do various reasons, then there markup, if it's based on a percentage of that, is going to be higher.

MR. HEMPLING: So this wasn't a contractor cost overrun. In fact, the word "cost overrun" isn't really even a fair term. This is simply a situation where your budget estimated wasn't exactly the right estimate. Things came out differently, is this correct --

MR. ISLER: Yes --

MR. HEMPLING: -- or is this --

MR. ISLER: -- that's exactly correct, yes, there.

MR. HEMPLING: There was not a contractor cost overrun?

MR. ISLER: That is correct.

MR. HEMPLING: For this contract?

MR. ISLER: Correct.

MR. HEMPLING: There's another line item, Mr. Isler, startup and testing-labor, which is the last item listed before overheads.

Do you see that?

MR. ISLER: Yes.

MR. HEMPLING: And the estimated project costs for purposes of a rate case was zero and the estimate as of 7/12/09 was 1.637 million.

Do you see that correct?

MR. ISLER: Yes.

MR. HEMPLING: Okay. And what's the explanation --

well, you gave an explanation -- excuse me.

What is the explanation for that differential?

MR. ISLER: Well, that's a little bit different. That's where when we did the original estimate, we did not include the amount for the startup and testing labor. We included the amount of -- we included the amount for startup and testing for an outside consultant to come in and leave that; but, what we didn't include was that they were going to need labor from the construction contractor to assist in that step; and, just to be honest with you, that's something that we inadvertently left out of that original estimate.

MR. KONDO: Okay. And still on this exhibit that we've been talking about, which is HECO S-17A01, startup and commissioning, which is the fourth item under outside services, consulting services.

Do you see that?

MR. ISLER: Yes.

MR. HEMPLING: Again, the estimated project costs for the rate case was zero, the estimate as of 7/12/09 --

MR. ISLER: Yeah, this --

MR. HEMPLING: Wait. Hold on one second. The record's got to show the numbers what is -- I mean, at this point, a miniscule -- 1.656 million; is that correct?

MR. ISLER: That's correct.

MR. HEMPLING: Okay. What's going on here?

MR. ISLER: This was an area where -- this is more of the way it's on the paper. It could be a little confusing.

When we originally did the estimate, the 1.94 -- 1.95 million was actually for construction and startup.

MR. HEMPLING: I'm sorry, what's 1.95 million?

MR. ISLER: Oh, I'm sorry. If you look one line above where it says construction management --

MR. HEMPLING: Yeah.

MR. ISLER: -- 1.95 million --

MR. HEMPLING: Yeah.

MR. ISLER: -- in our original cost estimate that was provided in the docket, that was intended to cover both construction management and startup and commissioning. When we actually dod the contracts, they were separated out and just the way we accounted for them. The total then would really be about 2.66 million.

So really the line that has -- in the second column, the line that has 1.25 -- or $1.2 million for construction management, should be added with the line that has 1.66 million for startup in commissioning and compare that to the line in the column to the left that has 1.95 million.

MR. HEMPLING: Right. So doing so you get about a 2.8 million estimate as of 7/12/09 as compared to a 1.94 million in the rate case estimate. Right?

MR. ISLER: That is correct.

MR. HEMPLING: That's still about 6 or 700,000 difference.

And what's that about?

MR. ISLER: You mean why was there the difference?

MR. HEMPLING: That's right.

MR. ISLER: Okay. But it comes back to, once again, the 1.95 million was an estimate of what it was going to take based on certain number of people being on-site for a certain period of time to manage the project for construction management and for start of the commissioning.

As it turned out, we needed more people for more time to get everything done and, therefore, the actual costs was higher than what we originally anticipated.

MR. HEMPLING: Okay. So you also testified this would be in ST-17A.

Is that your testimony, ST-17A?

MR. ISLER: Yes.

MR. HEMPLING: At pages 16 to 17 you testified as to the cost variance for the substructure installation foundations and duct runs; is that correct?

MR. ISLER: Yes.

MR. HEMPLING: Okay. So here we're looking at a, if I have this right, a differential between the original estimate and current estimate of about 8.4 million; is that correct?

MR. ISLER: I believe that the difference was approximately 4.5 million.

MR. HEMPLING: Okay. Let's see what I got wrong here. You're exactly right. My mistake. Yeah.

So what's this about? Reasons?

MR. ISLER: Yeah. So what this category covers, in case it's not clear, it has to do with underground duct banks in which we're going to put in electric cable, whether they be high voltage or medium voltage; and, so in the original cost estimates, not having a lot of details about how many cables needed to go in, what all the connections were basically because, at that point, we were at a very conceptual stage of the project, there were assumptions that were made on the size of these duct runs and how many ducts would go in them and how much concrete would be used.

Ultimately, when the final design was completed, there were significantly more duct banks than we had originally assumed. That's what the table here shows.

For example, for the low voltage duct banks and low voltage would be, 4 kb or lower. We ended up having 1,500 cubic yards of concreted instead of 240.

MR. HEMPLING: That's six times as much?

MR. ISLER: That's --

MR. HEMPLING: Seven.

MR. ISLER: Yes.

MR. HEMPLING: Yeah.

MR. ISLER: The amount of cables, in general, for this project, increased significantly from those original assumptions that we made. To give you an idea, originally, we had anticipated using about 184,000 feet of cable of various sizes. In the final design, we had 390,000 feet of cable.

MR. HEMPLING: Where is that on here?

MR. ISLER: That would be --

MR. HEMPLING: I don't see a line item for cable.

MR. ISLER: Let me find that. It is on page 21.

MR. HEMPLING: Okay. Those are the major contributors to this 4.45-million-cost variance?

MR. ISLER: Let me go back to that. I lost the page I was on.

Can you refresh my memory?

MR. HEMPLING: Well, we started on page 16 and --

MR. ISLER: Sixteen.

MR. HEMPLING: -- 17.

You talked about concrete, you talked about cable.

That's the bulk of it?

MR. ISLER: No. The other major part of this was actually foundations for all the equipment. Once again, we had to make assumptions for sizes and numbers of the foundations for all the equipment.

And the second table in this section shows the differences for individual parts. And this table doesn't total it up, but the totals there that the original assumptions were about 2,500 cubic yards of concrete; and, the final design had about 6,500 cubic yards of concrete. If you total up all the numbers in the two columns for original assumptions and final design.

MR. HEMPLING: And then you had the -- this is now at page 18, HECO ST-17A referring to civil work.

What's civil work?

What does that phrase refer to?

MR. ISLER: Let's take a step back. For this project, this was developing a brand-new site; so, there was a lot of work that we had to do to create the site and to put in a plumbing system, to put in storm drain systems, and things like that to actually develop the site; so, that's what I'm labeling as civil there.

MR. HEMPLING: So they use your phrase cost variance. There's a 3.12-million-dollar cost variance here also. Correct?

MR. ISLER: Yes.

MR. HEMPLING: And what were the reasons for that?

MR. ISLER: What's stated here, about half of that increase is attributable to the scope not being what we assumed originally; especially, with the things like the storm drain system and the wastewater system, we made certain assumptions.

An example would be for the storm drain system, we had assumed that we'd be able to put in a system and then tie it all in into an existing city storm drain system that runs along Kanoa Street, which fronts are property.

When we got into the details of this project and started talking with the City, it became very cumbersome, very challenging to tie into their system, and we ended up having to go a different route where we actually put in injection wells, instead of tying into their existing system. Things like that ended up costing more than what we had originally assumed.

The other half increase in this area is probably -- well, it is attributable to just underestimating the market costs at that time for that type of work because, you know, this work involves not only labor from the contractor, but it also involves material cots, and that's kind of a running theme throughout this whole cost estimate versus final costs is that, you know, one of the reasons that that final costs was higher than what we estimated was because the market conditions for materials and for the construction market were higher than normal. Material costs extraordinarily -- we saw extraordinary increases in material costs that we hadn't seen before.

So when I talk about construction, in this sense, I'm talking about not only the labor to do the work; but, also the materials that they needed to provide to do it, the piping, the wires, and such.

MR. HEMPLING: So I want to understand.

Now there are roughly $53 million, which is the sum of the cost variances between the original estimate and the 193 million, is that roughly correct?

I think you testified to about 53, 55 million?

MR. ISLER: Yeah, I think it's just under 56 million.

MR. HEMPLING: Okay. Let's use 55 million.

MR. ISLER: Okay.

MR. HEMPLING: So there are a couple of -- we take that 55 million and we can put it into a couple of categories.

One is stuff you just forgot about --

MR. ISLER: There --

MR. HEMPLING: -- right?

MR. ISLER: -- are some things that we did not include.

MR. HEMPLING: I just want to list the categories for a second.

MR. ISLER: Okay.

MR. HEMPLING: So one category is actions, activities, or items that were knowable but we just didn't remember to put them down, stuff happened, that's one category.

MR. ISLER: Okay.

MR. HEMPLING: Okay. Correct?

MR. ISLER: Yes.

MR. HEMPLING: The second category is the plan for carrying out certain activities turned out to be insufficiently -- life became more complicated than what you thought it would be, you needed more concrete, you needed more cable?

MR. ISLER: Yeah, I would --

MR. HEMPLING: What would you call that?

MR. ISLER: -- categorize that in changes in design assumptions used to develop the original cost estimate.

MR. HEMPLING: Well, that's one way of putting it. The other way of putting it is that your original design assumptions were incorrect. There's two ways of saying the same thing.

You had to change the design assumptions. Right?

MR. ISLER: There were design assumptions that did not hold true, yes.

MR. HEMPLING: But that could be because you were in error or things changed in a way that you couldn't anticipate?

It could be one or the other or both in the second category?

MR. ISLER: I would say it's primary due to the fact that at the time we did the original cost estimate we had very little details about the design. It was very much of a conceptual level at that point --

MR. HEMPLING: Okay.

MR. ISLER: -- so we had to make assumptions and sometimes they did not hold.

MR. HEMPLING: And you said that throughout your testimony that sometimes they were -- an estimate was based on a concept before you had real blueprints and real people there to --

MR. ISLER: That's correct.

MR. HEMPLING: -- get the details clear. Correct?

MR. ISLER: Yes.

MR. HEMPLING: Okay. And then the third -- our third category of reasons for the 55-million-dollar sum of cost variances would be that the cost of materials or the cost of labor turned out to be higher than what was assumed for the activities that you planned. Correct?

MR. ISLER: Yes.

MR. HEMPLING: And is there any other category of contributor to the cost variance in total?

MR. ISLER: I would say so. I'd say one of them -- another factor could be as-found conditions.

MR. HEMPLING: I'm sorry?

MR. ISLER: As-found conditions being different.

MR. HEMPLING: Being different from what?

MR. ISLER: Been assumed. Sometimes --

MR. HEMPLING: You mean conditions underground like --

MR. ISLER: Correct.

MR. HEMPLING: -- there was more oil underground than you expected --

MR. ISLER: Correct.

MR. HEMPLING: -- that you didn't see it at the beginning --

MR. ISLER: Correct.

MR. HEMPLING: -- is that right?

MR. ISLER: Yes.

MR. HEMPLING: Anything else?

MR. ISLER: I would say that to a lesser extent expediting the project to maintain the project schedule at times.

MR. HEMPLING: You mean the need for expedition was greater than what you anticipated when you began?

MR. ISLER: No, it was more so there were things that came up; especially, because along with the market conditions that created higher costs, there were also things that were creating lead times to be much longer than anticipated.

So sometimes we had to maybe pay some premium to get equipment here or to get certain things done; and, then what we would do is we'd weigh that against the total costs of the project and delays in the construction, because once we started construction of the project to delay the project or to string it out would have cost more due to AFDUC, due to having personnel there that we had to pay for to do management.

So an example of that would be there was one large piece of equipment that was a switch gear, a critical piece that we wanted to get in sooner, and there was a way that we could pay -- I believe it was $80,000 -- extra to get it here two weeks earlier. We looked at what the corresponding AFDUC would be as well as the costs for having people here longer.

The AFDUC was about a million dollars a month; so, to expedite that by two weeks made a lot of sense to us. It reduced the overall costs of the project but that wasn't something that we took into account in the original estimate. And of all these categories that we've been talking about --

MR. HEMPLING: Hold one second. I just want to absorb what you just said.

MR. ISLER: Okay.

MR. HEMPLING: I know there's more.

This concerning with minimized AFDUC that's a concern where the shareholder and the ratepayer interests are consistent with each other, is that correct, because it's about getting a plant into a condition where it can provide benefits rather than just sit there and cost money; is that correct?

MR. ISLER: Yes.

MR. HEMPLING: I don't mean to feed you an answer.

MR. ISLER: No.

MR. HEMPLING: I'm trying --

MR. ISLER: And I only hesitate to answer because I'm obviously -- I'm not an accountant and I'm not very expert in this, but I do know that, you know, if more AFDUC accumulates to the project and that project -- and that AFDUC we were getting cost recovery for that that's not good for the ratepayer; so, we're trying to minimize that effect on the ratepayer.

MR. HEMPLING: Well, as I understand, the ratepayer interest is to get the benefits from the project as soon as possible as long as the ratepayer is stuck paying for the cost of money during the time the project isn't operating. That's what I mean by saying the two interests are -- I should be asking a finance person this question.

MR. ISLER: Yes.

MR. HEMPLING: I'm seeing some of your colleagues nodding their heads yes --

MR. ISLER: Yes --

MR. HEMPLING: -- so I think I got this right.

MR. ISLER: -- that would be better.

MR. HEMPLING: Okay. Is there a sixth category of contributions to the total cost variance?

MR. ISLER: I think there is one and it -- what I have in mind is some items ended up being a little more complex to install than we anticipated; so, specifically, what I have in mind is the exhaust stack.

We had a cost estimate for that and then when we got the final design from the vendor, it was more complex to put together than anticipated that it might be and, therefore, the construction costs was more, the erection costs was more.

MR. HEMPLING: Because there's more hours associated with the labor?

MR. ISLER: Yeah, more hours. The way that they had to put it together, you know, we assumed certain pieces could be prefabricated together and then put together in a more efficient manner; but, then in working with the vendor, they had reasons that that couldn't be done.

MR. HEMPLING: Okay. Is there a seventh category?

MR. ISLER: No.

MR. HEMPLING: So these six categories, Category 1 is we'll call -- I forgot. Category 2 is changes in design. Category 3 is changes in the costs associated with labor and materials. Category 4 is as-found conditions. Category 5 is the cost of expedition. And Category 6 is the complexity of installation.

Again, just by review, do you think those six cover everything?

MR. ISLER: That covers most everything, and let me point out that Categories 2 and 3 that you mentioned there, which are changes in the design assumptions, and the market conditions for materials and construction are by far the two major --

MR. HEMPLING: Right.

MR. ISLER: -- contributors.

MR. HEMPLING: So these are six contributors that are generic to all projects.

They're not unique to this project, are they?

MR. ISLER: I would say, yes, with the exception of the market conditions that we saw were very unusual to see the escalations in material, such equipment, and construction costs that we saw, but we saw those at a very abnormal rate.

MR. HEMPLING: But in terms of the categories themselves, they exist with respect to any project?

I understand their magnitudes can --

MR. ISLER: Yeah.

MR. HEMPLING: -- vary but their conditions, the six categories exist with respect to any project?

MR. ISLER: I would agree with that, yes.

MR. HEMPLING: So you could have known at the time that the Company came to the Commission with a -- what is it, $138 million? --

MR. ISLER: 137 million.

MR. HEMPLING: -- $137 million, why not just come to the Commission saying, at minimum, it's going to the 138 million but there are six categories of costs of likely variances that it happens in every project; so, instead of having in your mind commission 138 million, why don't you have in your mind 138 million plus some increment?

Why, from your perspective as an expert in costs forecasting and project management, why wouldn't your advice to the Company be to include these potential variances in a proposal to the Commission?

MR. ISLER: Well, I think that we -- I'm not necessarily the person to answer as to what we go in; and, with that, that's more of a regulatory type question that I don't know what --

MR. HEMPLING: Yeah, but you're the person that knows the most about projects costs so --

MR. ISLER: But as far as the cost estimates go, you know, we will normally put them together. We think about those things. It's clear in this project that we didn't take into some -- I mean, there's a 56-million-dollar difference between the estimated costs and the final costs, and, obviously, that's not good and that's not what we intended to do when we come with an estimate.

We do take into account some of these factors; and, I think, it's clear that for this project, we didn't take into account some of these factors as much as we should have or could have. But I'm not sure what that mechanism is, to be honest with you, to come in with a cost estimate to say this is what we think it is and this is how much of a contingency there are for unknowns.

I don't know -- I personally don't know if there's a mechanism to do that in our current regulatory environment, and that's why I said I think that's more of a regulatory question.

MR. HEMPLING: Well, it's a question that I want to ask you for a moment. You're the author of the 137-million-dollar estimate, is that right, in terms of Company responsibility?

MR. ISLER: Yes.

MR. HEMPLING: And at the time that you made the 137-million-dollar estimate, did you feel that there was a likelihood that the outcome would be higher based on your experience in estimating projects?

MR. ISLER: I did not.

MR. HEMPLING: You thought that none of these six factors would apply to your project?

MR. ISLER: Oh, no, I would have thought that all six of those factors would apply, and we took into account that, in our estimate -- we took some of this into account. We didn't take into account the level that would have gotten us to what the final --

MR. HEMPLING: Okay.

MR. ISLER: -- cost as it was.

MR. HEMPLING: So the $137 million took into account each one of these six factors. The reason why we got from 137 million to 193 million is that each one of these six factors; especially, Factors 2 and 3, just had much larger impact than even you as the project cost estimator anticipated?

MR. ISLER: Yes, I would agree with that.

MR. HEMPLING: So there was never a situation where you were telling regulatory people don't go in with 137 million, I know it's going to be greater than that, it always is; and, they said, uh-uh, let's go in this lower number and worry about the cost variance later, that didn't happen?

MR. ISLER: No, that did not happen.

MR. HEMPLING: You just missed the estimate by $55 million?

MR. ISLER: Yes, we did.

MR. HEMPLING: No, you.

MR. ISLER: Yes --

MR. HEMPLING: Okay.

MR. ISLER: -- well, it's not just me; but, yes.

(Laughter.)

MR. ISLER: I mean, it's not like I sat in a corner by myself doing this.

(Laughter.)

MR. HEMPLING: You are now.

(Laughter.)

MR. HEMPLING: Excuse me a second. You've been very helpful. Just give me a second.

COMMISSIONER KONDO: Mr. Isler, I'm going to ask you a couple of questions while Mr. Hempling looks at his notes.

What was the final cost estimate or what was the cost estimate at the time of the final design?

MR. ISLER: The cost estimate?

COMMISSIONER KONDO: Because I understand from your testimony that the 137-million-dollar number is based upon very preliminary design work; is that correct?

MR. ISLER: That's correct. I would have to say -- I mean, the cost estimate at the final design is the $193 million. The way -- the way this worked is that -- and, especially, with the construction costs, you know, we -- different parts of the design were done at different times.

When a part was done, whether it be for the civil work or for the mechanical work, for the electric work, when that part was done; or, let's say it was over 90 percent done, then we would get final pricing for construction.

And, at that point, that's when, you know, we knew what the construction was going to cost. Before that it was -- you know, there's a lot of unknowns because a lot of these factors were -- the design assumptions were taken into account, you know, they changed throughout; so, that's when we -- that's when the engineering was done, was right before we would get the final costing for construction.

Now that said, let me take a step back. Knowing that there was a point in this project where we had some construction done and we would call it 10 -- not construction, some engineering done, and we would call it the 10-percent engineering phase; at that point, we actually went out to some construction contractors and bid to select a construction contractor based on that amount of engineering being done.

We did that for multiple reasons. One of the reasons was we wanted to get somebody on board who could construct the project. At the time the market was very -- a very good market for construction, and there were projects that were having a hard time even finding someone to construct it, and we didn't want that to happen because of the need, you know, in trying to get this in.

COMMISSIONER KONDO: The things you're talking about, does that happen before or after the 137-million-dollar CIP application submitted to the Commission?

MR. ISLER: That happens afterwards.

COMMISSIONER KONDO: So the application is based upon, even, a lack of a better word, rawer information than what you have at the time you're trying to get the -- you're submitting these?

MR. ISLER: Absolutely, yes. One of the key factors to getting this information that we need on the design is to actually be able to procure equipment and to get detailed engineering information from all the different vendors. The way we're setup, our policy is not to make major cost commitments until we have a lot of our major permits and approvals in place; one, of which, was the approval in the docket.

So once that we got that approval, then we started going out making commitments for materials and getting design information back to our consultant, and they were able to start getting more details; and, through that process and over time, that's when the details came out and it turned out that those details had a lot more than what we assumed in the beginning.

COMMISSIONER KONDO: Okay. At some point, I'm assuming that -- and I understand the six factors that you went through with Mr. Hempling, I understand they can change throughout the entire course of the project --

MR. ISLER: Mm-hmm.

COMMISSIONER KONDO: -- but I'm assuming that, at some point, when you have more final engineering documents, whether it's 90 percent or whatever the level is, you send those out for bid --

MR. ISLER: Mm-hmm.

COMMISSIONER KONDO: -- and you come back and get some more -- a better picture of what the total costs of the project will be; is that correct?

MR. ISLER: That is correct.

COMMISSIONER KONDO: And when does that happen?

MR. ISLER: Well, you know, for a lot of projects, it's a one-step thing. We go in -- or it's a two-step thing. You go in with what that initial cost estimate, and then we don't until we actually go out and bid with the 90-percent engineering completion done.

For this project, we took an interim step when we only had about 10 percent done in order to get a contractor on board and there were some other reasons; but, one of the factors there too was also to do what I call a sanity check on our cost estimate. We did that. We realized, oh, this going to cost -- this is going to cost more than we anticipated; and, that's when we increased our cost estimate to $164 million, and we submitted a cost update to the Commission explaining that.

It wasn't just the construction. There were a couple of other things that were -- the escalation for the combustion turbine, some material costs there; and, at that point, we had a good idea that the transformer, the large transformer that we bought was going to be a million dollars were than what we estimated.

So we sent in that update to the Commission and updated our official cost estimate, and that's where we stood at the time of the rate case application. That's why it's 164 million. But then when we got the 90 percent done, we got even more engineering done. That's when we went out and got final pricing; and, when that pricing came in, it came in higher. And it didn't come in higher -- the reason it came in higher is because the scope of work was actually more, as they got into more details of the design, more of those things came out.

And it was clear that it was going to cost more to get the project done, because in that interim step, where we had the 164, there were still a lot of assumptions that needed to be made at that time and some of those assumptions held and many of them did not.

COMMISSIONER KONDO: I might have missed it, but the 164 is that based upon the 10-percent engineering or is that based upon the 90-percent engineering?

MR. ISLER: The 164 was based on the 10-percent engineering.

COMMISSIONER KONDO: Okay. Thank you for clarifying that.

MR. HEMPLING: What changes in your cost estimating practices where you put into place as a result of this experience?

MR. ISLER: I do think that one of things that we need to look at now is this factor of there's a time lag, a large time lag between when we go in with the application until the time that we actually then get approval and then can go forward and construct the project; and, that time lag is maybe a little longer than it used to be.

And I think we need to look at that and look at these six factors; especially, the Factor No. 2 that talks about changes in design assumptions?

MR. HEMPLING: What does that have to do with time lag?

MR. ISLER: That one doesn't. I'll get to that. That's more of Factor 3.

MR. HEMPLING: Okay.

MR. ISLER: So for Factor 2, I think we need to look at that and understand better, you know, how much we know and how much we don't know and how much we're including as a contingency at that point in the project.

And I think that for a project like this, we need to -- it's likely that we need to include more. I don't -- and I don't want to get into the regulatory aspects but -- and then, also, because of the timeline look at the uncertainties that there are with, you know, equipment costs and things like that; although, let me go back and make it clear that, you know, we do look at equipment inflation, you know, with the time lag, how long it's going to take things.

But this particular project, there were -- there were escalations that I don't think that we could have reasonably anticipated. I've never seen increases like that before but --

MR. HEMPLING: They account for what portion of the 55 million do you think?

MR. ISLER: Approximately, 15 million.

MR. HEMPLING: Okay. Keep going, please.

What other thoughts?

MR. ISLER: Well, you know, I think, the other thing that we've got to look at, and I don't know exactly how we can do this, but we need to look at ways that we can try to get information sooner and have better information when we do the estimate; but, I don't know that I have an answer for you right now that there's a way to do that.

But I think the answer is to, you know, we need to be getting together with ourselves and our consultants and our contractors and, you know, look at the lessons learned and what can we do, what could we have done to anticipate; although, I'm not sure that there was a lot we could have done there, but other than to include contingencies, you know, to try to have our estimates be closer to the final amount.

And let me also take one step back because this project is a project in which there are a lot of unknowns. This is a brand-new site to build a new generating facility. We don't build power plants all the time here. There are other projects that we do that we don't have the same level of uncertainty and so our estimating can be better.

So what I'm trying to say is we need to evaluate how much uncertainty there is at the beginning and take that into account when we come in with estimated cost to the Commission.

MR. HEMPLING: But don't you feel you're doing that now?

Well, don't you feel you did that with this project?

MR. ISLER: I do. But I think the lesson learned is that we took into account certain factors, but the factor that we did not take into account well enough, I think the main factor was how much uncertainty it really was in that scope, you know, not the overall scope because that was well-defined.

We put in one combustion turbine and we put in a water treatment system, the big picture; but, getting down to the details, how much uncertainty are there with those details and evaluating that better.

MR. HEMPLING: You know, what comes through in your testimony, is that other than the large 15-million-dollar chunk that you attribute to the changes in cost of materials and labor, it's a couple of dozen of a million here and a million there; is that correct?

MR. ISLER: Well, yeah, there are lot of those, but let me also take a step back. When I said 15 million, that was for equipment or materials that we directly purchased, large pieces of equipment.

What comes into the construction aspect is that that's a combination of labor and all those materials; so, you know, material cost escalations affected the construction costs too. It's really hard for me to go into that cost difference and separate how much of that was materials and how much was labor, but it is a combination of both.

I mean, I think it comes out as looking like, you know, a million here, a couple of million there and everything because we went down into such detail with our cost report. Had we done it a higher level, you know, it would have looked a little different.

MR. HEMPLING: Is this type of cost variance, which is roughly 30 percent, I guess, from 137 to 193, it's more than 30 percent --

MR. ISLER: I think it's about 40 percent.

MR. HEMPLING: -- 40 percent that's unusual for a cost variance in your line of work?

MR. ISLER: I don't know that that's a true statement. There are projects that sometimes have higher variances. There are sometimes projects that don't have variances, and I think it is a function of how much you know what the market conditions are.

And, I think, you know, mister -- someone like Mr. Lou Ardini could give you a better idea of, you know, what he's seen for variances on projects elsewhere; but, it's certainly not something that we -- we strive to do better than that.

MR. HEMPLING: All right. Here's what I'm getting at. I know you're doing your best, but numbers matter to a Commission and so when the --

MR. ISLER: Yeah.

MR. HEMPLING: -- Commission sees $137 million, it has a different effect on its decision-making than if it sees something that's 193 million, you would accept that?

MR. ISLER: Okay.

MR. HEMPLING: It's called framing. When a number gets stated, it makes a difference in how people behave.

MR. ISLER: I would agree.

MR. HEMPLING: Well, you hire people, you look at bids.

Doesn't the numbers that people bid to you effect your expectations and lower numbers make you feel more optimistic than higher numbers?

MR. ISLER: Yes.

MR. HEMPLING: So is it necessary for the Commission -- well, what is your recommendation, both for Commission policy and for the Company's policy to avoid situations where the Commission gets committed to a number that's too optimistic?

Is there any change that the Commission should make?

Should the Commission require that any estimate you come in with get a 40-percent adder so that the Commission has the right number in mind?

That would be unreasonable, wouldn't it, because 40 percent is so unusual?

Is that your view?

MR. ISLER: I'm a little -- I'm hesitant to talk about the policy on what we should do for the cost estimates? I could defer that to Mr. Simmons but.

(Whereupon, Mr. Hempling briefly confers with the Committee.)

MR. HEMPLING: Excuse me one second, please.

MR. ISLER: Yes.

MR. HEMPLING: Are you going to be involved in cost estimating for Big Wind?

MR. ISLER: I am not currently involved in any projects involving Big Wind.

MR. HEMPLING: Because multiply 40 percent times the Big Wind estimates is going to get a much bigger, quote, cost variance, close quote, than this small 193-million-dollar project. Right?

MR. ISLER: I don't know what the cost estimates are for Big Wind. I'm not involved in the Big Wind investments.

MR. HEMPLING: Okay. All right.

You're not aware of anything in the Company culture that encourages you to keep the numbers conservative when a proposal comes to the Commission, right, it's in your professional interest to get the number as close to right as possible; and, if possible, get the number higher than what it's going to come out to be. Right?

MR. ISLER: Absolutely, there's -- there's absolutely no culture that says to come in with lower estimates. We do try to get them correct and, obviously, this would have been, you know, easier for many of us if we were closer to what the actual cost was.

MR. HEMPLING: Do you have any idea why it's so common in regulatory proceedings for us to be talking about cost overages rather than cost underages?

Do you have any idea why that's so common?

MR. ISLER: I'll just go back to it. You know, at the time that we do the cost estimates, there's typically a lot of assumptions that are needed to be made and not a lot of certainty for some projects. I mean, some projects, we have a good handle on it; and, I know currently we don't.

And I'm not familiar exactly with what, you know, other circumstances you're talking about; but, typically when we do come into the Commission and set a time or we don't have a lot of the details.

COMMISSIONER KONDO: And, in this case, you actually had a consultant that helped you do the cost estimate; is that correct?

MR. ISLER: That's correct, Sergeant Mundy helped us out.

COMMISSIONER KONDO: And all the discussions that you've had with Mr. Hempling about the initial cost assessment that was with in consultation with Sergeant Mundy?

MR. ISLER: Absolutely.

(Whereupon, Mr. Hempling briefly confers with the Commission.)

CHAIRMAN CALIBOSO: Mr. Hempling, we're done for

CT-1 for today but we're going to have another session on CT-1 in the morning. Correct?

MR. HEMPLING: Yes. And the topics that we would cover, I have some questions on fuel expenses associated with CT-1, some questions on --

COMMISSIONER KONDO: Impact, the financial impact related to CT-1.

MR. HEMPLING: And then I'll have a few questions on the KBPH pipeline.

CHAIRMAN CALIBOSO: Anything else before we recess for the day?

Thank you very much.

We will recess and reconvene tomorrow morning at 9 a.m.

We are now in recess. Thanks.

(Whereupon, 5:02 p.m., the hearing adjourned and is to be resumed on Wednesday, October 28, 2009, at 9 a.m.)

CERTIFICATE

This is to certify that the attached proceedings before the Public Utilities Commission of the State of Hawaii In the Matter of the Application of Hawaiian Electric Company, Inc. For Approval of Rate Increases and Revised Rate Schedules and Rules, at 465 South King Street, Honolulu, Hawai'i, commencing, on Tuesday, October 27, 2009, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.

Tristan Joseph, CSR NO. 469, RPR NO. 24906

Tristan-Joseph, CSR NO. 469, RPR NO. 24906